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## **TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1944**

**No. 71.**

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**ROSCOE A. COFFMAN, APPELLANT,**

**vs.**

**BREEZE CORPORATIONS, INC., AND THE UNITED  
STATES OF AMERICA**

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**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF NEW JERSEY**

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**FILED APRIL 28, 1944.**

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**IN DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF NEW JERSEY**

Civil Action No. 3289

ROSCOE A. COFFMAN, Plaintiff,

vs.

FEDERAL LABORATORIES, INC., a Corporation of the State of Delaware, and Breeze Corporations, Inc., a Corporation of the State of New Jersey, Defendants

**COMPLAINT**

1. Plaintiff Roscoe A. Coffman is a resident of Las Vegas, Nevada, and is a citizen of the State of Nevada. Defendant Federal Laboratories, Inc. is a corporation organized and existing under the laws of the State of Delaware; defendant Breeze Corporations, Inc. is a corporation organized and existing under the laws of the State of New Jersey, having its principal place of business in the City of Newark, County of Essex and State of New Jersey, and is the owner of all the common capital stock and a majority of the preferred stock of the defendant Federal Laboratories, Inc. and is in full and complete control thereof. The amount involved in this action is in excess of \$3,900.00 exclusive of interest and costs.

2. Plaintiff is the sole owner of the Letters Patent described in the second paragraph of the License Agreement hereto annexed and marked Exhibit "A", all relative to improvements in starting motors, and shells for use therewith. Said patents are extremely valuable. The starters therein described are necessary and are used on a very large percentage of aircraft being used by the United States and its Allies in the present war. Said starters are set in motion by the explosion of the shells likewise covered by said patents, the motor being started, not by an explosion resulting from the discharge of said shells but by the control of the gases generated from the burning of the charge contained in the shells controlled in the manner and method described in the patents.

3. That on December 8, 1932, plaintiff and defendant Federal Laboratories, Inc. executed and delivered the Li-



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License Agreement, a true copy of which is annexed hereto, marked Exhibit "A", and made a part hereof for certainty of allegation. Plaintiff alleges that after the execution and delivery of said License Agreement, Exhibit "A", the defendant Breeze Corporations, Inc. purchased all of the outstanding common capital stock of defendant Federal Laboratories, Inc., and by virtue of said stock ownership elects the officers and directors of defendant Federal Laboratories, Inc. and fully controls its practices and policies.

4. The plaintiff alleges that prior to the month of July, 1937, defendant Federal Laboratories, Inc. entered into an [fol. 4] agreement with defendant Breeze Corporations, Inc. whereby defendant Breeze Corporations, Inc. undertook to perform the terms of the agreement hereto annexed as Exhibit "A". Plaintiff was not a party to said agreement.

5. At the time of the execution of said agreement, Exhibit "A" annexed hereto, on December 8, 1932, defendant Federal Laboratories, Inc. was in a position to and did make the manufacture and sale of the Coffman Starter, described in said agreement, its primary business. Plaintiff alleges that defendant Breeze Corporations, Inc. purchased the outstanding common capital stock of Federal Laboratories, Inc. for the purpose of securing control of the manufacture and sale of plaintiff's starters and shells mentioned in said agreement Exhibit "A".

In September, 1937, the defendants commenced arbitrarily deducting from remittances of royalties to plaintiff 25% thereof on each accounting period. Plaintiff never acquiesced in said deduction and made it a practice in cashing royalty checks to note on the back of the checks prior to his endorsement that they were accepted under protest.

6. Plaintiff alleges that after Breeze Corporations, Inc. acquired control of defendant Federal Laboratories, Inc., the latter ceased the manufacture and sale of the Coffman Starters, and defendant Breeze Corporations, Inc., started to manufacture and sell the same; that the defendants Breeze Corporations, Inc. and Federal Laboratories, Inc. having refused fully to account to the plaintiff and pay him for the royalties reserved in said agreement, Exhibit "A" hereto annexed, and having defrauded the plaintiff of

moneys due to him from the sale of certain rights under said patents to certain English companies, plaintiff commenced an action, known as civil action No. 1395, in February, 1941 in the District Court of the United States for the District of New Jersey against defendants Federal Laboratories, Inc. and Breeze Corporations, Inc. for an accounting of royalties under the said agreement marked Exhibit "A" hereto annexed, and also for the amounts due plaintiff in consequence of the frauds alleged in said complaint. A true copy of the complaint in said action and of the answer of the said defendant Breeze Corporations, Inc., is hereto annexed, marked Exhibits "B" and "C" respectively, and made a part hereof. Said action is at issue and on the calendar awaiting trial in due course. That in said action the court after hearing has ruled that the plaintiff shall be permitted to recover any and all royalties that accrue not to the date of the commencement of said action but to the date of the trial thereof.

7. That pursuant to an order of the United States District Court for the District of New Jersey the plaintiff has had accountants examining the books of the two defendant corporations for the purpose of determining the royalties due plaintiff under the terms of the agreement, Exhibit "A"; they have determined that the royalties due plaintiff from the two defendants to November 30, 1943 are approximately \$261,000.00, and that for the entire year 1943 they aggregate \$280,000.00 on starters, parts and shells combined.

8. Plaintiff further shows that on December 29, 1943 he received by registered mail at his home a certified copy of Royalty Adjustment Order No. W-9 issued December 18, 1943, a true copy of which is hereto annexed and marked Exhibit "D" and made a part hereof for certainty, under the terms of which, the War Department of the United [fol. 5] States acting pursuant to the terms and provisions of Royalty Adjustment Act 1942, Public Law 768, 77th Congress; 35 U. S. C. 89-96, has attempted to determine as follows:

"(1) Fair and just rates and amounts of royalties for the manufacture, use, sale or other disposition of said alleged inventions are hereby determined, fixed and specified to be as follows: "

(a) Upon each starter sold to or for either the War Department or the Navy Department, the sum of Eight (\$8) Dollars each, and

(b) upon parts and cartridges sold to or for either the War Department or the Navy Department, no royalties;

but not to exceed the sum of Fifty Thousand (\$50,000) Dollars to be paid to Licensor in each calendar year commencing January 1, 1943 in respect of starters sold to or for the War Department and the Navy Department, added together.

"(2) Until further Order, Licensee is hereby authorized to pay to Licensor, on account of any manufacture, use, sale or other disposition of said alleged inventions for the War Department heretofore occurred, or hereafter occurring while Sections 1 and 2 of said Act remain in force, royalties at the rate and not to exceed the amount determined, fixed and specified in paragraph (1) hereof, and no more, under

(a) the above-mentioned license agreement dated December 8, 1932, and

(b) any license or arrangement between Licensor and Licensee entered into on or after the effective date of said notice and during the time that Sections 1 and 2 of said Act remain in force which in any respect continues, supplements, modifies or supersedes the license referred to in subparagraph (a) hereof or the present arrangement under which said royalties are paid.

"(3) Licensee is hereby directed to pay to the Treasurer of the United States, through Commanding General, Army Air Forces Materiel Command, attention, Royalty Adjustment Board, Wright Field, Dayton, Ohio, the balance, in excess of the payments authorized by paragraph (2) hereof, of all royalties specified in the licenses or arrangements referred to in paragraph (2) hereof which were due to Licensor and were unpaid on the effective date of said notice, or since said date have or may hereafter become due to Licensor, on account of any manufacture, use, sale or other disposition of said inventions for the War De-

partment or the Navy Department heretofore occurred or hereafter occurring while Sections 1 and 2 of said Act remain in force; and demand is hereby made for payment forthwith of so much of said balance as is now due to Licensor."

9. Plaintiff alleges that defendants Breeze Corporations, Inc. and Federal Laboratories, Inc., are indebted to the plaintiff under the terms of the license agreement, Exhibit "A" attached hereto, for royalties on Coffman starters, parts and shells for the calendar year 1943 approximately \$260,000.00, of which defendant Breeze Corporations, Inc. owes the plaintiff \$210,000.00, and defendant Federal Laboratories, Inc. owes the plaintiff approximately \$48,000.00.

[fol. 6] 10. Plaintiff further alleges that there has been received by him through the United States mails a copy of Royalty Adjustment Order No. N-7 approved by the Acting Secretary of the Navy December 23, 1943, identical in form with War Department Order No. W-9, a true copy thereof being hereto annexed, marked Exhibit E, and made a part hereof.

11. Plaintiff further alleges that neither defendant Federal Laboratories, Inc., nor defendant Breeze Corporations, Inc., has to the date of the filing of this complaint made payment to the plaintiff of the \$50,000.00 mentioned in Royalty Adjustment Orders Nos. W-9 and N-7, aforesaid, and particularly in paragraph (1) thereof, nor has either of said defendants made payment of any part of the balance thereof due the licensor, to the Treasurer of the United States or anyone else pursuant to paragraph (3) of said Royalty Adjustment Orders.

Plaintiff alleges that he is informed and believes that a meeting of the officers of the two defendant corporations, with their counsel has been called to be held in the State of New Jersey on the afternoon of this day, January 7, 1944, to consider what actions, if any, the defendants shall take with reference to said Orders and whether payment as required by paragraph (3) of said Orders shall be made to the Treasurer of the United States.

12. Plaintiff alleges that the Act of Congress above mentioned, being Public Law 768, 77th Congress (Chapter 634—2nd Session) is null and void and that the said Royalty

Adjustment Orders Nos. W-9 and N-7, dated December 18, 1943, aforesaid, made in pretended compliance with said statute are likewise null and void for the following reasons:

1. The Fifth Amendment of the Constitution of the United States provides that no person shall be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation, and said Act of Congress and said Orders operate to deprive the plaintiff of his property in said license agreement arbitrarily and capriciously, without due process of law.

2. Said Act of Congress and said Orders operate to take plaintiff's property in his patents mentioned in said license agreement and in said license agreement for public use without just compensation.

3. Said Act of Congress in terms attempts to deprive the plaintiff of all remedy by way of suit or other legal action against the defendants for the payment of the royalties reserved in said license agreement wherein the validity of plaintiff's patents is conceded and relegates the plaintiff to an action against the United States in the Court of Claims to recover such sum, if any, as, when added to the royalties fixed and specified in such Orders, "shall constitute fair and just compensation to the licensor for the manufacture, use, sale or other disposition of the licensed invention for the United States, and in which such suit the United States may avail itself of any and all defenses, general or special, that might be pleaded by a defendant in an action for infringement", and which defenses would not be open or available to the defendants herein.

[fol. 7] 4. Said statute and said Orders attempt to deprive the plaintiff of the limited monopoly accorded to the plaintiff by United States patents duly and lawfully issued to him, without just compensation within the meaning of the Fifth Amendment aforesaid.

5. The right of action attempted to be accorded the plaintiff under Section 2 of said Act of Congress by a suit in the Court of Claims of the United States, does not and cannot give to plaintiff just compensation for his rights in said patents and his rights in said royalty agreement. Exhibit A hereto annexed.



6. Said Act of Congress and said Orders operate to deprive plaintiff of royalties earned under said license agreement to December 18, 1943, in excess of the sum of \$250,000.00, for an award of \$50,000.00 royalties.

7. Said statute and said Orders are invalid and null and void in that they deprive plaintiff of all royalties reserved under said license agreement for parts manufactured and sold under said patents and for shells and cartridges covered by plaintiff's patents and manufactured and sold by the defendants.

8. Said statute and said orders made in pretended compliance therewith operate to deny to plaintiff his rights to an accounting in the action pending in this Honorable Court and the right to recover therein for any and all royalties due the plaintiff for the year 1943 and thereafter.

9. Said Act of Congress under which said Orders were made violates Article I, Section 1 and Article I, Section 8, of the Constitution of the United States, in that it is an unconstitutional delegation of legislative power setting up no standards for the guidance of agencies of the United States Government and drawing no distinction between the manufacture of articles for or on behalf of the United States, whether they be patented or unpatented, or whether they are manufactured under a valid license or manufactured under a patent where no license has been granted.

Wherefore plaintiff prays:

1. That an injunction may issue out of and under the seal of this Court enjoining and restraining the defendants and each of them, from complying with paragraph (3) of Royalty Adjustment Order No. W-9 and Royalty Adjustment Order No. N-7, and in particular from paying any of the royalties due plaintiff under said license agreement Exhibit A to the Treasurer of the United States or to any other person or persons than the plaintiff, pursuant to the command of Royalty Adjustment Order No. W-9 and Royalty Adjustment Order No. N-7.

2. For an order enjoining and restraining the defendants Federal Laboratories, Inc. and Breeze Corporations, Inc. and each of them, from paying to the Treasurer of the United States any royalties that may hereafter become due to the plaintiff as licensor on account of any manufacture,



use, sale or other disposition of said inventions above mentioned, for the War Department or the Navy Department, pursuant to the command of paragraph (3) in said Orders.

[fol. 8] 3. That the Act of Congress, aforesaid; to wit, Public Law No. 768 of the 77th Congress (Chapter 634 Second Session) and the said Royalty Adjustment Orders Nos. W-9 and N-7 may be adjudged to be null and void for the reasons above mentioned.

4. That a temporary injunction may issue forthwith upon the filing of this complaint enjoining and restraining defendants Breeze Corporations, Inc. and Federal Laboratories, Inc., their agents, servants and attorneys, from paying any moneys to the Treasurer of the United States pursuant to said Royalty Adjustment Orders No. W-9 and N-7 until a court can be summoned to hear argument and determine whether the plaintiff is entitled to a permanent injunction for the reasons aforesaid; plaintiff alleges that irreparable harm and damage will be occasioned to him unless such a temporary restraint is granted.

5. That plaintiff may have such further and other relief in the premises as may be just.

Carpenter, Gilmour & Dwyer, Attorneys for Plaintiff,  
75 Montgomery St., Jersey City, N. J.

James D. Carpenter, Jr., of Counsel.

STATE OF NEW JERSEY,

County of Hudson, ss:

SAMUEL M. COOMBS, JR., of full age, being duly sworn on his oath, according to law, deposes and says:

I am a member of the firm of Carpenter, Gilmour & Dwyer, attorneys for the plaintiff in the within mentioned cause. I have read the foregoing bill of complaint and the matters and things therein contained, and the allegations therein contained are true as I verily believe.

I received yesterday, January 5, 1944, from the plaintiff, Roscoe A. Coffman, the certified copy of Royalty Adjustment Orders No. W-9 and N-7, together with the envelopes in which he received them, and the envelope bearing the Army Order was postmarked at his post office December 29, 1943. He authorized me to take such steps

as are necessary to protect his interests. Because of Mr. Coffman being presently in California, there is no possibility of getting an affidavit from him verifying this bill of complaint within the time necessary to secure an injunction to restrain the payment of royalties due Mr. Coffman under the terms of his agreement; Exhibit "A" annexed to the complaint, before they may be paid over to the Treasurer of the United States by the said defendants.

Samuel M. Coombs, Jr.

Sworn to and subscribed before me this 7th day of January, A. D. 1944. Alice M. Boyle, Notary Public of New Jersey. (Notarial Seal.)

[fol:9] STATE OF NEW JERSEY,  
County of Hudson, ss:

JOHN ALLEN APORTA, of full age, being duly sworn, according to law, upon his oath, deposes and says:

I live at 65 Seaman Avenue, New York, N. Y.

I am a graduate of the School of Commerce, Accounts and Finance of New York University, and I am in the employ of Chambellan, Berger & Welti, Certified Public Accountants, of 92 Liberty Street, New York, N. Y., accountants appointed by Honorable William F. Smith, Judge of the United States District Court for the District of New Jersey, as plaintiff's representatives to inspect the sales books and ledgers, sales invoices, contract registers and sale contracts, and all records showing quantities of Coffman starters and all devices manufactured under any Coffman patent by the defendant Breeze Corporations, Inc. after December 8, 1932.

I was one of the five men to commence an examination of the books, records and papers of the defendant Breeze Corporations, Inc., commencing August 4, 1943. Two of us remained at that work for August and September, 1943, and thereafter five of us worked continuously until Christmas time, and from thence three of us have been working at this examination.

I worked on the books, records and papers of the defendant Breeze Corporations, Inc. at Newark from August 4, 1943 to November 20, 1943. I went to Pittsburgh and arrived there Monday, November 22, 1943, and commenced an examination of the books, records and papers of the

defendant Federal Laboratories, Inc. and worked there until December 9, 1943, with one assistant. Thereafter I returned to Newark and worked on the books, records and papers of the defendant Breeze Corporations, Inc. from December 9, 1943 until today and I am still working there.

I have read the foregoing bill of complaint and know the contents thereof. The contract, Exhibit "A" annexed to the complaint is a copy of the licensed agreement made between the plaintiff and defendant Federal Laboratories, Inc., for I was given a photostatic copy thereof by Mr. Harry E. Rau, Secretary and Treasurer of the defendant Federal Laboratories, Inc., while I was in my work in Pittsburgh. My work at Pittsburgh revealed that the plaintiff Roscoe A. Coffman was paid his royalties quarter annually until September, 1937, and that thereafter twenty-five percent was deducted arbitrarily as selling expense from the gross sales of the starters, starter parts, starter engine cartridges. I find from an examination of the books that this was an unjustifiable deduction.

From my examination of the books, records and papers of the defendant Federal Laboratories, Inc. and Breeze Corporations, Inc. there was payable to Roscoe A. Coffman from Breeze Corporations, Inc. to November 30, 1943, for royalties that accrued from the sale of Coffman starters and parts from January 1, 1943, the sum of \$196,384.59, and I believe that to December 31, 1943, the royalties would aggregate \$216,000, although I have not completed my audit to December 31, 1943. The royalties that were due to the plaintiff, Roscoe A. Coffman, from Federal Laboratories, Inc. from January 1, 1943 to October 31, 1943, aggregate \$40,596.75 and I believe that the royalties due from Federal Laboratories, Inc. to Roscoe A. Coffman to [fol. 10] December 31, 1943, will aggregate \$48,000.00. The total royalties under the terms of the contract, Exhibit "A" annexed to the complaint, from both Federal Laboratories, Inc. and Breeze Corporations, Inc. for the entire year 1943 aggregate \$260,000 in round figures. None of this money whatsoever has been paid to Roscoe A. Coffman.

I found from my examination of Breeze Corporations, Inc. books and records that that company in 1943 sold Coffman starters, engine cartridges and parts from January 1 to November 30, for a total of \$3,273,076.53. The total sales by Federal Laboratories, Inc. of the Coffman devices covered by the licensed agreement, Exhibit "A",

between January 1 and November 30, 1943, was approximately \$753,000.00.

I learned in the course of my investigation that the defendant Breeze Corporations, Inc. owns all of the common capital stock of the defendant, Federal Laboratories, Inc. and substantially all of the preferred stock of the Federal Laboratories, Inc.

Last Monday, January 3, 1944, one of the officers of Breeze Corporations, Inc. showed me an azalid copy of the Royalty Adjustment Order No. N-7, and they said that they had a War Department Order also.

On Thursday, January 6, 1944, I inquired whether Breeze Corporations, Inc. has paid to the Treasurer of the United States any of the Coffman royalties as provided in paragraph 3 of the Royalty Adjustment Orders. I was told and verily believe that neither Breeze Corporations, Inc. nor Federal Laboratories, Inc. has made such payment. Herbert J. Dwyer, Secretary of Breeze Corporations, Inc., told me that a conference is going to be held in New Jersey on Friday, January 7, 1944, between the officials of both Companies and their counsel, to decide whether or not payment should be made to the Treasurer of the United States as required by said Orders. I believe that unless an injunction is issued, as prayed for in the bill of complaint, one or both of the defendants may pay to the Treasurer of the United States within the next few days all the royalties due the plaintiff, Roscoe A. Coffman, for the year 1943 in excess of \$50,000.00.

John Allen Aporta:

Subscribed and sworn to before me this 7th day of January, 1944. Alice M. Boyle, Notary Public of New Jersey. (Notarial Seal.)

[fol. 11]

# EXHIBIT "A" TO COMPLAINT

## Agreement.

This Agreement, made this 8th day of December, 1932, between Roscoe A. Coffman, of Pittsburgh, Allegheny County, Pennsylvania, hereinafter called the Licensor, party of the first part, and Federal Laboratories, Inc., a corporation of the State of Delaware, having its prin-

principal place of business in Pittsburgh, Pennsylvania, hereinafter called the Licensee, party of the second part.

Whereas, Licensor is the sole owner of the United States Patent No. 1776228, dated September 16, 1930, French Patent No. 702133, dated August 18, 1930, Italian Patent No. 295015, dated August 18, 1930, Canadian Patent No. 324031, dated July 12, 1932, British Empire Patent No. 355022, dated August 13, 1930, German Patent Application No. 77-30, and United States Patent Applications No. 585594, filed January 8, 1932, No. 581032, filed December 14, 1931, No. 586057, filed January 11, 1932, No. 595403, filed February 26, 1932, No. 595924, filed February 29, 1932, No. 388870, filed August 28, 1929 and No. 536389, filed May 11, 1931, all relative to improvements in starting motors and shells for use therewith; and covenants that the title thereto is unencumbered and he is fully and completely free and able to contract with reference thereto, as hereinafter set forth, and

Whereas, Licensor is willing to grant and Licensee is desirous of obtaining a non-assignable and exclusive license to manufacture, use and sell devices and shells for same as set forth in the aforementioned patents and applications.

Now, therefore, for and in consideration of the sum of One Dollar (\$1.00) paid by each of the parties to the other, receipt whereof is hereby acknowledged, and in further consideration of the faithful performance of the covenants and conditions hereinafter recited, the parties hereto have agreed as follows:

First: Licensor hereby grants to Licensee, and alternately to its successor in business, which is presently expected to be Federal Ordnance and Engineering Company, upon the terms and conditions herein set forth, a non-assignable and exclusive license to make, use and sell devices and shells embodying the inventions, types and designs as set forth in the aforementioned patents and patent applications. The license hereby granted, unless sooner terminated as hereinafter provided, shall be for the full term of the letters patent last issued on said applications, or any of them, or any reissues, continuations, divisions, renewals, or extensions thereof.



Second: Licensee shall pay to Licensor, his heirs or assigns, for the license hereby granted the sum of \$5,000.00 payable as follows: For the first 200 devices, \$25.00 on the sale and delivery of and payment for each device made for consumption of shells. Licensee shall also pay to Licensor, his heirs or assigns, a license fee or royalty equal to six per cent (6%) of the Licensee's net selling price on all devices and parts thereof sold. The Licensee's net selling price shall not be less than sixty per cent (60%) [fol. 12] the established retail selling price, less any discount to customers, not to exceed ten per cent (10%); providing these discounts, plus commissions, shall never exceed fifty per cent (50%) of Licensee's established retail selling price.

In addition thereto, Licensee shall pay to Licensor, his heirs and assigns, on all power generating units (shells) or parts thereof, made or caused to be made and sold, a license fee or royalty of six per cent (6%) of the Licensee's net selling price, payable after sales and payments to Licensee therefor. Licensee's net selling price shall not be less than sixty per cent (60%) of the retail selling price to the consumer.

If Licensee, in its sole and uncontrolled discretion, shall deem it advisable to market said devices or any of them on a lease plan, rather than on an exclusively cash payment plan, then on devices so rented or leased and paid for, royalty shall be paid for at the afore-recited rates as rentals are paid after shipment, providing full royalty payment shall be made within one year, based upon the net retail price of the respective device if sold for cash, and no royalty shall be payable on carrying charges, finance services, insurance or any other element of the rental due to the use of said deferred payment or leasing plan.

Royalty payments in accordance herewith shall be made on or before the thirtieth day of January, the thirtieth day of April, the thirtieth day of July and the thirtieth day of October of each year or fraction thereof for the three months period ending at the close of the previous month.

Third: Licensee shall render statements, duly verified by its proper officers at each of the times stated for payment, showing its sales and collections for the previous three months and shall keep full, accurate and complete



books of account respecting the said business; and Licensor, or his duly authorized representative, shall have the right of inspecting or examining said books of Licensee at all reasonable times during business hours for the purpose of verifying said quarterly statements and determining the correctness thereof.

Fourth: Licensee hereby covenants and agrees that during the life of this agreement it will give its best efforts diligently and continually to manufacture, sell and market or cause to be manufactured, sold and marketed devices and shells under this license; and will exert its best efforts to create a demand therefor and to increase and extend its business; and to supply the demand for said devices and shells.

Licensee further agrees that during the life of this agreement it will not engage in the manufacture or sale of any other devices that shall directly compete with the products herein licensed. And, during the continuance of this agreement, Licensor shall not engage, apart from the Licensee, in the manufacture or sale of airplane engine starters or any other device or article licensed hereunder; nor shall he grant any license therefor to any person or persons other than the Licensee, unless Licensee has failed or refused for thirty (30) days to authorize patent application for the given device in question and make it subject to this license agreement.

Fifth: Unless sooner terminated as herein provided, the license hereby granted to Licensee shall continue during the entire life of the patents hereinbefore recited and all patents granted or to be granted on patent applications aforementioned; or any reissues, continuations, divisions, renewals, or extensions thereof as before set forth, but in no event or by process of law, shall this license agreement [fol. 13] be construed to be an assignment to said Licensee of any of said patents or applications or any part of same set forth herein or on any future applications or patents secured by the Licensor. This document is merely a license agreement and in event of termination or cancellation thereof for any reason whatsoever, the rights and titles to any and all patents or patent applications now held, or to be applied for by Licensor in the future as set forth in this agreement, and the manufacturing and

sales rights given under the terms of this agreement shall automatically revert to said Licensor as his sole property. Licensor is hereby given an option, upon sixty (60) days written notice immediately given to Licensee upon cancellation, to purchase from Licensee at its manufacturing costs, such materials, devices and or parts as it may have on hand at that time. In the event Licensor does not exercise his option to purchase, Licensee shall have the right to sell the devices and material then on hand, providing that royalties shall be paid thereon at the rates provided herein. In event of cancellation or attempted cancellation by Licensor, Licensee shall have authority and license to continue the manufacture and sale of shells and repair parts and supplies only direct to customers who shall have purchased from Licensee any of the devices herein licensed and contemplated; said shells to be consumed by the customer and in no event shall said shells be sold by Licensee for resale to others. Provided, however, that royalties shall be paid thereon at the rates provided herein.

Sixth: Licensor shall promptly disclose to Licensee any improvements made by him relative to devices and shells of the character, principle, type and/or design as set forth in the aforementioned patents and patent applications. Likewise, Licensee shall promptly disclose to Licensor any improvements made by it or any of its employes on any parts of the devices or systems or shell developments and Licensor shall be privileged to take part in any and all laboratory or other experimental work with relation to said devices or shells and said Licensor shall be kept reliably informed at all times of the progress of such developments and experimental work, it being the intent hereof for Licensor and Licensee to cooperate, one with the other, in the further development and furtherance of the inventions and patents covered by this agreement.

On all patentable improvements made by either the Licensor or by or under the direction of the Licensee or by its employes, said Licensor shall, if requested by Licensee, without the payment to him of any additional compensation, execute, where lawful for him so to do, the necessary papers for the filing of application for letters patent and obtaining patents thereon in any and all countries elected by the Licensee. Licensee shall, at its own cost and ex-

pense, pay for any and all such applications for patents, both in the United States and foreign countries applied for in connection with said devices as set forth herein and covered by this agreement, and filed by the Licensor with the approval of the Licensee. Licensee shall pay any and all costs and expenses necessary and incident to the maintaining in full force and effect all foreign patents granted on such applications, together with all foreign patents now issued and in full force and effect, provided, however, if Licensee does not wish to so maintain any specific foreign patent it may decline to pay the expense incident to the maintaining thereof and release said patent from this agreement of license; providing Licensee [fol 14] shall decline not later than ninety days prior to the final date for action necessary to keep said patent in full force and effect.

The selection of patent attorneys for use in connection with the filing and preparation of patent applications under the terms of this agreement, shall be vested in the Licensor; provided, however, the fees and charges of said attorneys shall be reasonable in Licensee's opinion. Licensor shall have the right to select attorneys for use with Licensee's attorneys in any prosecution or defense of infringement suits; provided, however, expense of his attorneys for this purpose is borne by Licensor.

All said patents to be applied for by Licensor or by Licensee or any of its employees shall become a part of the license hereunder and royalties shall be paid thereon at the rates provided herein. However, in event Licensee does not elect to take out and pay for patents on any said improvements, after having been given by Licensor a thirty days notice in writing of his intentions to apply for a patent on said improvement, then said Licensor may apply for said improvement patent or patents at his own expense; and said Licensee shall not be entitled to use said improvements or devices as set forth in said patent application or applications until Licensor is reimbursed for all moneys expended by him in connection with obtaining such patents.

Seventh: Licensee, at its own cost and expense shall defend any and all suits which may be brought either against it or the Licensor or any of the Licensee's customers by reason of the manufacture, use or sale of de-

vices of the character herein contemplated and shall, at its own cost and expense diligently prosecute any and all suits which may be required against third persons or entities by reason of infringing acts of such parties. The provisions of this paragraph shall be effective both as to foreign and American rights, applications and patents. Without payment to him of any additional compensation, the said Licensor covenants and agrees to execute, at the expense of the Licensee, any and all papers which may be found necessary or desirable in any suit or suits brought under and pursuant to this agreement, and the said Licensor further agrees that he will testify in any interference or litigation whenever requested to do so by said Licensee, without remuneration for service, but all necessary expenses incident to travel shall be borne by said Licensee.

Without payment to him of any consideration other than the royalties herein recited, Licensor covenants and agrees with Licensee that, during the continuance of this agreement he will, at the expense of Licensee, execute or cause to be executed, any and all licenses or agreements which may be required to vest in the Licensee or its successor in business, which is presently expected to carry the name of Federal Ordnance and Engineering Company, an exclusive and nonassignable license under any and all inventions, applications or patents which Licensor has taken and may take out in connection with or relating to airplane engine starters or any of the devices and products to which this agreement applies.

It is understood and agreed that if, in any suits involving any of the letters patent or applications under and pursuant to which the exclusive right and license herein has been granted, charging infringement thereof, any of said letters patent or applications should be held to be invalid by the final judgment of a Court of competent jurisdiction, or in the event that the Patent Office should refuse to grant patents on said applications, or such a [fol. 15] court decision should so limit the effect of said applications and/or patents as to make possible for competition to manufacture or sell starters, devices and/or shells embodying the inventions of said applications and/or patents, and in the event a competitor shall so manu-

facture and sell any of the herein mentioned products to the detriment of Licensee, then and in such event the royalty and compensation herein agreed to be paid for said patent and or application under this agreement shall thereafter cease and determine, at the option of Licensee and thirty days written notice to the Licensor of the exercise of said option.

Eighth: Failure of the Licensee to perform the terms and agreements of this contract by it to be performed, shall be deemed a breach thereof, and upon failure of the Licensee to cure the said breach after Licensor shall have given to Licensee thirty (30) days written notice; or in the event the royalties, or the combined royalties and full time salary, if any, from Licensee shall amount to less than \$5,000.00 per year; after the first year, Licensor shall have the right to cancel this agreement upon thirty (30) days written notice to the Licensee. Upon such cancellation or other termination hereof, the Licensee covenants to make, execute and deliver to Licensor any and all proper instruments to revert him with full and complete title and right of, in and to all said patents and applications and all sub-licenses lawfully granted hereunder without any further right or claim to any thereof on the part of Licensee.

Ninth: On all applications for foreign patents filed or granted as herein contemplated, Licensee shall have the right to grant sub-licenses for the manufacture, use or sale only in the country or countries respectively in which the Licensor has secured patents or filed applications for patents as provided for elsewhere herein. As to any sub-license granted in accordance herewith in any countries foreign to the United States the cash payments and royalty payments received therefrom shall be divided one half to Licensor and one-half to Licensee, and Licensor herein shall be entitled to no other compensation thereon. On any foreign license executed by Licensee a royalty of not less than six per cent (6%) on net selling price shall be provided, unless otherwise agreed to in writing by Licensor. Net selling price as herein defined.

Tenth: In the event of lawful adjudication of Licensee as a bankrupt or on the appointment of a permanent receiver for the Licensee by a Court of competent jurisdiction.



tion or insolvency of the Licensee, or general assignment for benefit of creditors by Licensee, this agreement and the License hereby granted shall cease and determine at the option of Licensor upon written notice to Licensee or its legal representatives.

Eleventh: The devices and shells or power generating units licensed hereunder shall be marketed under the name "Coffman" and shall be advertised and labeled as such. Each device and each shell container shall be marked with a permanent label or name plate showing in legible letters the name "Coffman" and also be inscribed with "Licensed under Patent Nos. and Patents Pending."

Twelfth: Notices in accordance with this license agreement may be given by either party to the other by registered mail, properly addressed and mailed to the address last furnished by the addressee to the other party.

[fol. 16] Thirteenth: Licensee shall purchase all loaded shells from Atlas Powder Company of Wilmington, Delaware, if and providing that the price, delivery and quality of such materials are equal to or better than price, delivery and quality of materials obtainable otherwise and elsewhere.

Fourteenth: This agreement shall not be construed as giving shop rights or any other claims to Licensee on inventions or patents that shall hereafter be developed by Licensor which are not directly related to the patents and inventions herein enumerated.

Fifteenth: The aforementioned successor in business to Licensee, which is presently expected to be Federal Ordnance and Engineering Company, if it dissolves Licensee, shall endorse hereon its full acceptance of all the terms, covenants and provisions hereof and shall be deemed the sole Licensee herein, without any right whatsoever to assign this license or grant sub-licenses except as hereinbefore provided.

Sixteenth: Except as herein otherwise provided, the license hereby granted to Licensee shall be non-assignable, either by the act of the Licensee or by operation of Law,



without the approval of Licensor in writing first had, and obtained.

In witness whereof this agreement has been executed in duplicate the day and year first above written, each copy to be taken as an original for all purposes.

Roscoe A. Coffman (Seal) Federal Laboratories,  
Inc., by John S. Young, President.

Witness: G. Olecadick. Attest: R. B. Reynolds, Secretary.

[fol. 17]

EXHIBIT "B" TO COMPLAINT

UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY

Civil Action

ROSCOE A. COFFMAN, Plaintiff,

v.

FEDERAL LABORATORIES, INC., a corporation of the State of Delaware and BREEZE CORPORATION, INC., a corporation of the State of New Jersey, Defendants.

COMPLAINT

The plaintiff, Roscoe A. Coffman, residing at No. 800 North Las Palmas Avenue, in the City of Los Angeles, State of California, respectfully shows that:

1. The diversity of citizenship of the parties to this cause and the amount in controversy creates the jurisdiction in this Court.

2. On December 8th, 1932, plaintiff entered into an agreement with Federal Laboratories, Inc., a corporation of the State of Delaware, a copy of which agreement is hereto annexed marked schedule "A" and made a part hereof.

3. That at the time of making of said license plaintiff was the Sole owner of United States Patent #1776228, dated September 16, 1930, French Patent #702133 dated August 18, 1930, Italian Patent #295015, dated August 18, 1930, Canadian Patent #324031 dated July 12, 1932, British Empire Patent #355022 dated August 13, 1930, Germany Patent Application #7030 and United States Appli-

cations #585594 filed January 8, 1932, #581032 filed December 14, 1931, #586057 filed January 11, 1932, #595403 filed February 26, 1932, #595924 filed February 29, 1932, #388870 filed August 28, 1929 and #536389 filed May 11, 1931, all relative to improvements in starting motors and shells for use therewith.

4. That in and by the agreement aforesaid plaintiff licensed the defendants Federal Laboratories, Inc., to handle, manufacture and sell articles under patents owned and covered by said license agreement.

5. That subsequent to the making of said agreement dated December 8th, 1932, and prior to the month of July, 1937, the Federal Laboratories, Inc., a corporation of the State of Delaware, entered into an agreement with the Breeze Corporation, Inc., a corporation of the State of New Jersey, whereby the said Breeze Corporation, Inc., undertook to perform the terms of the contract as imposed upon the Federal Laboratories, Inc., by the terms of said agreement.

6. That subsequent to the arrangement made between Federal Laboratories, Inc., and Breeze Corporation, Inc., [fol. 16] to wit, on or about September 23, 1936, and July 3, 1937, the Federal Laboratories, Inc., and Breeze Corporation, Inc., or one of them entered into an agreement with Breeze Corporation of Great Britain Limited, whereby the American Companies or one of them agreed that the English Companies or one of them should be entitled to make, use, apply and sell in the territory of Great Britain, the appliances, parts and systems in the said agreement that are particularly referred to and be entitled to use in the said territory any inventions and improvements in connection therewith.

7. All of the acts aforesaid of the American Companies and the British Companies relative to said patented articles were made without the knowledge, acquiescence or consent of this plaintiff and the plaintiff first learned of the dealings between the American Companies and British Companies about in the summer of 1939.

8. That on or about January 30, 1940, the plaintiff entered into a written agreement with Federal Laboratories, Inc., a copy of which agreement is hereto annexed marked

schedule "B" and made a part hereof. The said contract was signed by the plaintiff upon the representations of the Federal Laboratories, Inc., and Breeze Corporations, Inc., that as a result of settlements made with the English Companies aforesaid the American Companies were to receive from the English Companies the sum of \$100,000.00 or 25,000 pounds whichever amount might be the larger at the time of receipt, which payment was to be made in full settlement of lump sum payment for accrued and future royalties under the plaintiff's patents.

9. Subsequent to January 30, 1940, to wit, on or about May 21, 1940, the plaintiff executed an agreement to Plessey Company Limited and Breeze Corporation of Great Britain Limited, a copy of which agreement is hereto annexed marked schedule "C" and made part hereof. That said agreement copy of which is marked schedule "C" was annexed to a Deed made in April, 1940, between Breeze Corporation, Inc., of 41 South Street, Newark, New Jersey, and Federal Laboratories, Inc., of Pittsburgh, Pennsylvania, thereafter called the American Company and Plessey Company Limited, whose registered office is at 1 Broad Street Place, London, E. C. 2, England, and Breeze Corporation of Great Britain Limited.

10. That the English Companies refused to pay any monies over to the American Companies unless said American Companies would procure for them a release which was signed by the plaintiff.

11. That the American Companies, the defendants in this action, induced the signing of all agreements by the plaintiff upon the representations that the plaintiff was receiving one-half of the amount which was paid by the British Companies to the American Companies for past, present and future royalties on articles covered by the plaintiff's patents.

12. That the defendants fraudulently represented to the plaintiff the amount which the said defendants were to receive from the British Companies; that instead of receiving from the British Companies the sum of \$100,000 as represented by the defendants to the plaintiff, the defendants actually received the sum of \$284,000 for capital payment [fol. 19] on the Coffman Starter and royalties on the Coff-

man-unfilled orders. That in addition to said sum the defendants also received the sum of \$65,000 for Breeze shipments to England. That in addition to said sum, a lump sum of \$131,000 which was classified as lump sum royalties for the future use of Breeze and Coffman products.

13. That by virtue of the acts of the defendants aforesaid and the defendants' misrepresentations to the plaintiff of the amount received by the defendants from the British Companies and the failure of the American Companies to disclose to the plaintiff the amount which the defendants received for the Coffman interests, the plaintiff suffered a financial loss in excess of \$145,000. That instead of receiving \$50,000, the plaintiff should have received in excess of the sum of \$195,000.

14. That the defendants have failed to carry out the terms of the license agreement made between the plaintiff and the Federal Laboratories, Inc., on December 8th, 1932, as a result of which the plaintiff has suffered a large financial loss by virtue of reduced royalties.

15. That at the time the plaintiff entered into the agreement of December 8th, 1932, Federal Laboratories, Inc., was in a position to and did make the manufacturing and sale of the Coffman Starter its primary business. The Breeze Corporation, Inc., acquired the control of the stock of the Federal Laboratories, Inc., for the purpose of securing control over the output of the Coffman Starters. Immediately after acquiring the control of the Federal Laboratories, Inc., by stock purchase the Federal Laboratories, Inc., deducted 25% of the royalties they indicated to be due to the plaintiff upon each accounting period. That the plaintiff made it a practice in cashing royalty checks here such deductions were made to note on the back of the check prior to his endorsement that he was "accepting same under protest".

16. That as soon as the Breeze Corporation, Inc., acquired control of the Federal Laboratories, Inc., the Federal Laboratories, Inc. ceased the manufacturing and sale of the Coffman Starters and Breeze Corporation, Inc., without the consent of the plaintiff started to manufacture and sell the Coffman Starters. That since the Breeze Cor-

poration, Inc., has been manufacturing and selling the Coffman Starters the plaintiff has not been able to realize from the royalties nowhere near the amount which could be procured if diligence were used in the manufacturing and sale of the said Coffman Starters.

17. That because of the world-wide conditions there are great demands for the Coffman Starters which are in reality a necessity for successful use of aircraft, tanks and other offense and defense items. The Coffman Starter has been accepted by the Army and Navy of the United States as standard equipment and has been accepted as standard equipment by other branches of military units of other nations.

18. That the plaintiff has frequently demanded from the defendants an accounting of all royalties and profits from [fol. 20] the Coffman Starter which accounting the defendants have failed to render to the plaintiff.

19. That the plaintiff charges that all of the fraudulent acts aforesaid were committed in order to deprive the plaintiff of money to which he was legally entitled and that as a result of said unconscionable acts of the defendants, the plaintiff suffered great and irreparable damage.

Wherefore the plaintiff demands:

1. That the defendants or one of them be required to pay to the plaintiff such damages as the plaintiff has sustained in consequence of the defendants' fraudulent concealment of the amount which the Federal Laboratories, Inc. and Breeze Corporation, Inc. received from royalties, leases, sales or assignment arising out of the Coffman patents and starter.

2. That an account may be taken to determine the amount owing by the defendants to the plaintiff.

3. That the agreement of December 8, 1932, made between Roscoe A. Coffman and Federal Laboratories, Inc. a copy of which is marked Schedule "A" hereinbefore referred to, be rescinded.

4. That the defendants Breeze Corporation, Inc. and Federal Laboratories, Inc. be prohibited from continuing the manufacturing and sale of any articles under the Coffman patents.



5. That the defendants be ordered to assign and convey to the plaintiff any right, title and interest which the defendants or either of them may have in any royalty or agreements arising out of the licensing privilege under agreement of December 8, 1932.

6. That the defendants be decreed to deliver to the plaintiff all original drawings and blue prints of all devices and parts covered by the Coffman Patent which original drawings and blue prints together with parts were originally turned over to the Federal Laboratories, Inc. by the plaintiff.

7. That the defendant pay to the plaintiff the costs of this action and reasonable attorneys' fees to be allowed to the plaintiff by the court.

That the plaintiff have such other and future relief as the Court deems equitable and just.

Benjamin W. Dowden, Attorney for Plaintiff, 921  
Bergen Avenue, Jersey City, N. J.

"Schedule 'A'" is printed as Exhibit "A" of the bill of complaint.

[fol. 21]

#### SCHEDULE "B"

#### Supplemental Agreement

For values mutually received, the parties hereto agree that a certain license contract dated December 8th, 1932, between Roscoe A. Coffman and Federal Laboratories, Inc. is hereby amended as follows:

1. In lieu of accrued and continued royalties Coffman agrees to accept a lump sum payment for the exclusive right under his patents in the United Kingdom, specifically excepting Canada.

2. In lieu of royalties for a non-exclusive sub-license to be issued to either Plessey Co. Ltd. or Breeze Corporation of Great Britain, Ltd., for countries on the continent of Europe, Coffman agrees to accept a lump sum payment. In the event sub-licenses are issued to others than Plessey or Breeze, royalties or other proceeds from such other sub-licenses shall be divided as provided in the existing con-



tract between Federal and Coffman, dated December 8, 1932.

3. The lump sum payments referred to in Paragraphs 1 and 2 hereof shall aggregate Fifty Thousand Dollars (\$50,000.00) or one-half of Twenty-Five Thousand Pounds (£25,000), whichever may be the larger amount at the time that such is received by Federal Laboratories, Inc. and Federal agrees to pay said lump sum payments to Coffman upon receipt of the same by Federal.

4. It is mutually agreed that unless the payments referred to in paragraph 3 hereof are paid by Federal to Coffman within six weeks of the date hereof, Coffman shall have the option of withdrawing and cancelling this agreement to accept a lump sum payment, said option must be exercised in writing by registered mail to Federal.

In witness whereof, the parties have hereunto set their hands and seals the 30th day of January, 1940.

Rosecoe A. Coffman, Federal Laboratories, Inc., by  
Robert B. Reynolds, President.

Attest: Harry E. Rani, Secretary.

[fol. 22]

#### SCHEDULE

#### Know All Men by These Presents That

Whereas, Breeze Corporations, Incorporated, of 41 South 6th Street, Newark, New Jersey, U. S. A., and Federal Laboratories, Inc., of Pittsburgh, Pennsylvania, U. S. A. (hereinafter called the "American Companies") of the one part, and The Plessey Company, Limited, whose registered office is at 21 Broad Street Place, London, E. C. 2, England, and Breeze Corporation of Great Britain, Limited, whose registered office is at 54 Vicarage Lane, Ilford, County of Essex, England, (hereinafter called the "English Companies") of the other part are about to enter into a certain deed, whereby the English Companies are to pay to the American Companies the sum of Three Hundred Eighty-four Thousand (\$384,000.00) Dollars, for certain patent rights in the territories more specifically defined in said deed in connection with certain patents more specifically enumerated in two certain schedules attached to said

deed, designated respectively "the first schedule" and "the second schedule" and

Whereas, the English Companies have refused to execute and deliver said deed and pay the consideration therein provided to the American Companies unless the undersigned shall concur in all the terms, covenants and conditions in said deed contained, as if the undersigned were a party thereto and had joined in the execution thereof, and conveyed whatever right, title and interest the undersigned might have in and to a full and exclusive prepaid license without the payment of any past due or future royalties in and to any and all of the patents enumerated in said schedules, to the English Companies, and

Whereas, the undersigned is the record owner of various patents set forth in said schedules relating to starter for internal combustion engines, and especially the engines of aeroplanes, which patented devices are familiarly known as Coffman Engine Starters and Cartridges,

Now, therefore, I, Roscoe A. Coffman, presently residing at Vicksburg, in the State of Arizona, United States of America, in consideration of One (\$1.00) Dollar, lawful money of the United States to me in hand paid, and other good and valuable consideration, the receipt whereof is hereby acknowledged, and in order to enable the said deed to be executed and delivered and the consideration therein provided to be paid by the English Companies to the American Companies, do hereby certify as follows:

1. I concur in, ratify and approve the execution and delivery of the aforesaid deed by the respective American Companies and the respective English Companies, as fully as if I was a party thereto.

2. I hereby transfer and convey unto the English Companies and each of them, a full and exclusive prepaid license, without the payment of any past due or future royalties in and to any and all of the patents owned by me and described in the schedules of the aforementioned deed for the territories therein defined.

3. I hereby authorize and request the English Companies to pay over to the American Companies the said sum of Three Hundred Eighty-four Thousand (\$384,000.00) Dollars.

[fol 23] 4. I hereby certify that I have no further or future claims of any kind or description against the Eng-

lish Companies in connection with the prepaid license hereinbefore mentioned, excepting as hereinafter set forth in Paragraph designated "6" herein, relative to patent maintenance on my patents by the English Companies.

5. I represent that the present license to the American Companies, dated December 8th, 1932, affecting my patents, as set forth in said schedules, is now in full force and effect and the American Companies have full authority to enter into the aforesaid Deed or Contract and I know of no adverse claim of title to any of the Licenses, rights or patents in the territories mentioned in said Deed, and I will, at the request of the English Companies or either of them and at their expense, do anything that may be necessary to effectuate and defend any of the rights, benefits and interests which are assigned to the English Companies or either of them by said Deed in connection with my patents, provided that I am compensated in cash for my services and for all my expenses in connection therewith.

6. In consideration of the execution of said Deed aforesaid by the English Companies and the payment by them or either of them of the consideration therein named, to wit, Three Hundred Eighty-four thousand (\$384,000.00) Dollars to the American Companies jointly, I hereby remise, release and forever discharge and do for my heirs, executors, administrators and assigns, release, and forever discharge the said The Plessey Company, Limited and Breeze Corporation of Great Britain, Limited, their successors and assigns of and from all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, royalties due or to become due, claims and demands whatsoever in law or in equity, which, against The Plessey Company, Limited and Breeze Corporation of Great Britain, Limited, I ever had, now have or which I, my heirs, executors, administrators, or assigns can or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents. This release shall be conditional upon the English Companies or either of them paying all charges, fees, taxes and dues necessary to keep and maintain all of the patents mentioned in said schedules and belonging to me, in full force and effect for the full duration and life of each

of said patents and for any renewals, extensions or reissues thereof.

In witness whereof, I have hereunto set my hand and seal this 21st day of May, 1940.

— (L. S.) Roscoe A. Coffman.

UNITED STATES OF AMERICA,

State of New York,

City of New York,

County of New York, ss:

On the 21st day of May, 1940, before me personally came Roscoe A. Coffman, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

[fol. 24]

SCHEDULE C

This Deed is made the — day of April, 1940, between Breeze Corporations, Incorporated of 41 South Sixth Street, Newark, New Jersey, U. S. A., and Federal Laboratories, Incorporated of Pittsburgh, U. S. A. (hereinafter called "the American Companies") of the one part and The Plessey Company Limited, whose registered office is at 1 Broad Street Place, London, E. C. 2, and Breeze Corporation of Great Britain Limited, whose registered office is at 54 Vicarage Lane, Ilford, in the County of Essex (hereinafter called "the English Companies") of the other part.

Whereas:

(1) By two several Agreements dated respectively the 23rd September 1936 and the 3rd July 1937 the American Companies or one of them agreed that the English Companies or one of them should be entitled to make, use, apply and sell in the territory therein defined the appliances, products and systems in the said Agreements more particularly referred to and be entitled to use in the said territory the inventions and/or patents in connection therewith and have the rights and obligations set out in the said Agreements.

(2) It has been mutually agreed between the parties that as from the date hereof the said Agreements and all ar-

rangements in connection therewith shall be cancelled and the terms hereinafter set out substituted for same.

Now this deed witnesseth as follows:—

1. In consideration of the payment mentioned in clause 9 hereof, the American Companies and each of them hereby grant to and agree to vest in the English Companies (or either of them as the English Companies may appoint) the exclusive right to make, use, exercise, apply and sell in Great Britain and Northern Ireland, the Isle of Man, India, Egypt, Iraq, the Sudan and any of His British Majesty's Dominions (except Canada) Colonies, Protectorates, Protected or Mandated Territories, as they presently exist, (all of which places are hereinafter collectively called "the Territories") the appliances, products and systems, the subject matter of the said Agreements and which are set out in the First Schedule hereto and (except as reserved in the provisions of clause 4 hereof), all improvements thereof or inventions or processes useful in connection therewith already communicated to the English Companies, or either of them, by the date of this Agreement (all of which appliances, products, systems, improvements, inventions and processes so communicated are hereinafter collectively called "the said Items") and for the purpose of ensuring to the English Companies the benefit of the above paragraph hereof the American Companies will in particular—

(a) Forthwith assign to the English Companies all rights, benefits and interests owned, exercised, enjoyed or controlled by the American Companies, or either of them for any of the territories (except Canada) in all inventions, patents, designs and trademarks now subsisting in reference or applicable to the said items or any of them and which only include the patents and patent applications set out in the Second Schedule hereto. The American Companies and each of them hereby warrant that there are not outstanding licenses in the Territories (excepting Canada) based [fol. 25] upon any of the patents which are the subject of this agreement and further warrant and guarantee that the patents and patent applications set out in the Second Schedule is a full and complete and authentic list of all patents and patent applications owned or controlled by Breeze Corporations, Inc. or licensed to it in said Terri-



teritories, (excepting Canada) and also a full and complete list of all patents and patent applications owned and/or controlled by Federal Laboratories, Inc. or licensed to it in said Territories (excepting Canada) relating in any manner to starters for internal combustion engines and especially the engines of airplanes which devices are familiarly known as the Coffman engine starters and cartridges. In the event that there are presently any pending United States patents or patent applications of which there is no counterpart in the Territories (excepting Canada) the American Companies will disclose the subject matter of such patents or patent applications upon request and the same shall be covered by this Agreement. The American Companies and each of them further warrant their full legal title to each, every and all of the patents and patent applications set out in the Second Schedule hereto and further guarantee that their title to said patents and patent applications as herein listed in the Second Schedule is free and clear of any lien, charge, grant, license or encumbrances, legal or equitable, or any other kind or description and the American Companies and each of them agree to indemnify the English Companies and each of them in respect to such title.

(b) In the case of any of the territories (excepting Canada) for which any rights, benefits or interest in respect of any of the said inventions, patents, designs or trade marks are owned, exercised, enjoyed or controlled by the American Companies or either of them merely by virtue of a license or licenses (exclusive or non-exclusive) or other Agreement or Agreements, forthwith grant, assign or transfer (if and so far as permitted by the terms of the same) all such rights, benefits and interests to the English Companies or either of them as the English Companies may appoint either by way of sub-license or otherwise as the English Companies shall reasonably require and shall for such purpose obtain the consent or concurrence of any other party so far as the same may be necessary.

(c) Unless required by the British Government, neither import any of the said items into any of the territories (except Canada) nor directly or indirectly assist any party in any of the territories (except Canada) (other than the English Companies) to make, use, exercise, apply or sell the same and do all acts and things reasonably required to

prevent the importation of any of the said items into any of the territories (except Canada) but nothing contained in this Clause shall prevent the American Companies from selling any of said items to any person, firm or corporation, or governmental agency, in the normal course of their business, located in any place other than the Territories (except Canada) even though such items may eventually be imported into the territories in the normal course of business of such purchasers without the connivance or aid of the American Companies.

2. The English Companies shall have the right free from any payment other than that mentioned in Clause 9 hereof, to make, use, exercise, apply and sell the said items on the Continent of Europe. The American Companies and the English Companies will forthwith grant or cause to be granted to the English Companies non-exclusive licenses for that purpose in respect of any invention patented in any part of the Continent of [fol. 26] Europe in connection with any of the said items. The American Companies and the English Companies will enter into appropriate arrangements to obviate price cutting as regards any of the said items on the Continent of Europe.

3. The English Companies shall not import any of the said items except to the Territories (excepting Canada) and the Continent of Europe and will do all acts and things reasonably required from them to obviate such imports.

4. In the event of the American Companies or either of them, during a period of ten years from the date hereof, making or acquiring or becoming entitled to the control of any inventions useful in connection with the said items and which are being or shall hereafter be patented or otherwise protected or to any new product relating to said items of the American Companies or either of them, the American Companies will give to the English Companies an option or options for a period of 60 days to acquire an exclusive license or licenses or to purchase such patent rights for the territories, or any of them, on the best terms acceptable to the American Companies which have been bona fide offered to the American Companies, or either of them, by any third party, desiring such exclusive license or licenses or desiring to purchase such patent rights, and will not dispose of such patent rights or other rights for the term

tories (except Canada) or any of them until the expiration of such option period. Such option period shall run for a period of sixty (60) days after notice has been received by the English Companies or either of them, which notice shall be sent in writing and by registered mail.

5. The American Companies shall forthwith render every possible assistance to the English Companies and furnish all information and documents possessed or controlled by them with a view to rendering possible the re-establishment or renewal of Patent No. 355022 and shall on the execution hereof hand the same to the English Companies or cause to be lodged at H. M. Patent Office in London all additional necessary documents. The American Companies will also hand to the English Companies, or cause to be lodged at H. M. Patent Office in London all necessary documents which it may have in support of the application for such re-establishment or execute any further documents that may be required for said re-establishment, and in particular the original License dated the 8th day of December, 1932, in favor of Federal Laboratories Incorporated, and as soon as practicable any such documents shall be returned by the English Companies.

6. The American Companies and each of them hereby finally renounce all rights vested in them or their nominees to nominate or appoint one or more Directors of the Breeze Corporation of Great Britain Limited and have on the execution hereof procured the resignation of any Directors so appointed together with a formal release by the registered holders of all shares in the said Company heretofore held in trust for the American Companies or either of them of any such right of nomination by any means vested in such registered holders, or any of them.

7. The terms of all licenses, assignments or other documents required to carry this deed into full effect shall be agreed between the Solicitors of the parties and the Treasury Solicitor on behalf of the Secretary of State for Air or failing agreement between them, shall be referred for determination and settling to a barrister-at-law in England [fol. 27] of not less than seven years' standing to be appointed by the President for the time being of the Law Society in London.

8. In the case of any pending applications for patents, under which the American Companies presently have any right, title or interest, in respect of the Territories (except Canada) or any part thereof, the benefit of which is to be vested in the English Companies hereunder, the American Companies will diligently proceed with and complete such applications or procure the same to be diligently proceeded with and completed by all necessary parties and on completion thereof will, where the patents are issued to the American Companies or either of them or to any nominee or representative of the American Companies or either of them forthwith execute or procure the execution of an assignment thereof to the English Companies (or such of them as the English Companies shall appoint) as hereinbefore provided and where the American Companies or either of them only become interested in such new patents as Licensees only forthwith procure the execution of all necessary licenses in their own favor and grant a sub-license or sub-licenses in respect thereof to or otherwise effectively vest the benefit thereof in the English Companies (or such of them as the English Companies may appoint) to the intent that the English Companies shall effectively receive the benefit for the territories (except Canada) of the inventions or improvements comprised in any such applications as aforesaid.

9. In consideration of the premises, the English Companies will, on the completion hereof, cause to be paid to the American Companies jointly, at the office of their Solicitor, Lucius F. Crane, Esq., Bush House, W. C. 2, London, England, the sum of Three Hundred and Eighty-four Thousand (\$384,000.00) Dollars, without being subject to any deduction for English taxes and assessments whatsoever and free from impounding.

10. As from the date of these presents the said two Agreements are hereby rescinded and the American Companies and each of them hereby release the English Companies and each of them and the English Companies and each of them hereby release the American Companies and each of them, from all claims and demands whatsoever which any of them now has against any other of them, or which are accruing due from any of them against any other of them arising at any time out of the said Agreements or either of them or anything connected therewith or otherwise

in any manner whatsoever now subsisting or accruing in favor of any of them against any other of them and so that this release shall extend to and include all moneys due or accruing due in respect of commissions, royalties, fees and other payments from the English Companies or either of them to the American Companies or either of them Provided that there shall be excepted from this Release any sums now due or accruing due from the English Companies or one or other of them to the American Companies or one or other of them in respect of the price (exclusive of all commissions, royalties, fees and the like) of goods sold and delivered to the English Companies or either of them by the American Companies or either of them.

11. The term "the American Companies" and the term "the English Companies" shall wherever the context requires or admits be deemed to include their respective associated or subsidiary Companies or any Company, firm or persons controlled by them and their respective successors and assigns.

[fol. 28] 12. The costs and expenses of and in relation to all assignments, licenses and similar documents herein before referred to and in particular those referred to in clauses 1 (a) and (b) and 2 hereof shall be borne by the American Companies except that the English Companies shall pay the costs of their own Solicitors and Patent Agents and any English stamp duties payable in respect thereof and the fees (if any) of the barrister-at-law referred to in Clause 7 hereof shall be borne by both parties in equal shares.

13. It is mutually agreed that upon execution of this deed the English Companies shall be charged with the responsibility of maintaining any patents hereunder in the territories as hereinabove defined (except Canada and Continental Europe) and the American Companies are relieved of any responsibility or expenses in connection therewith.

14. This agreement shall be construed and operate according to English Law.

In Witness Whereof the respective companies have caused their respective common and/or corporate seals to be hereunto affixed.

The Plessey Company Limited, by \_\_\_\_\_



Attest: ———, Secretary. The Common Seal of Plessy Company Limited was hereunto affixed in the presence of: ———, Director; ———, Secretary.

Breeze Corporation of Great Britain Limited, by  
—————

Attest: ———, Secretary. The Common Seal of Breeze Corporation of Great Britain Limited was hereunto affixed in the presence of: ———, Director; ———, Secretary.

[fol. 29] Breeze Corporations, Incorporated, by:  
—————, President.

Attest: ———, Secretary. The Corporate Seal of Federal Laboratories, Incorporated was hereunto affixed in the presence of: ———, Secretary; ———, Director.

### The First Schedule

All Breeze products referred to in the said Agreement dated 23rd September 1936 or in the current catalogue of productions issued by Breeze Corporations, Incorporated, particulars whereof have been communicated to the English Companies or either of them on or before the date of these presents including in particular Breeze electrical conduit systems and components thereof and Breeze ignition screening harnesses and components thereof.

The Coffman Engine Starters, components thereof and cartridges therefor and all other appliances or components comprised in the said Agreement of the 23rd July 1937.

### The Second Schedule

List of patents covered by the licenses granted to the Breeze Corporation of Great Britain Ltd. and the Plessy Co. Ltd. by Breeze Corporations, Inc. and Federal Laboratories, Inc.

#### 1. *Patents affecting the Breeze Corporations license.*

397661	Registered proprietor (21.12.38)	J. J. Mascuch
416189	"	Breeze Corporations, Inc.
465425	"	"
465451	"	"
468806	"	"
474548	"	"

475764  
476133  
481329  
481406  
488823  
489004

(23.12.38)

[fol. 30] 2. *Patents under which the Federal Laboratories has an exclusive license affecting Coffman starters and cartridges.*

355022	(expired)	Registered proprietor	(on 19.5.39)	R. A. Coffman
444172	"	"	"	"
445734	"	"	"	"
455630	"	"	"	"
455685	"	"	"	"
455686	"	"	"	"
458729	"	"	"	"
458981	"	"	"	"
478313	"	"	(on 30.6.39)	"
479985	"	"	"	"
481639	"	"	"	"

The Common Seal of the Plessey Company Limited was hereunto affixed in the presence of: ———, Director; ———, Secretary.

The Common Seal of Breeze Corporation of Great Britain Limited was hereunto affixed in the presence of: ———, Director; ———, Secretary.

The Corporate Seal of Breeze Corporation's Incorporated was hereunto affixed in the presence of: ———, President; ———, Secretary.

The Corporate Seal of Federal Laboratories Incorporated was hereunto affixed in the presence of: ———, President; ———, Secretary.

[fol. 31] The common seal of The Plessey Company Limited was affixed by ———, the ——— of said Company, and said ——— affixed his signature hereto on the — day of April, in the year of Our Lord, nineteen hundred and forty, in the presence of: ———, Secretary; ———, Director.

ss.:

I, ———, of ——— England, Secretary of The Plessey Company, Limited, make oath and say that on the — day of April, A. D. 1940, I was present and saw the common seal of The Plessey Company Limited affixed to the an-

nexted Deed by —, the — of said Company, and that I saw said — sign, execute and deliver the said Deed for the purposes therein mentioned and that I and — subscribed our names as the witnesses to the execution thereof.

Sworn to this — day of April, A. D. 1940, before me —, Notary Public.

The common seal of Breeze Corporation of Great Britain Limited was affixed by —, the — of said Company and said — affixed his signature hereto on the — day of April, in the year of Our Lord, nineteen hundred and forty, in the presence of:

—, Secretary; —, Director.

[fol. 32] —, ss.:

I, —, of —, England, Secretary of Breeze Corporation of Great Britain Limited, make oath and say that on the — day of April, A. D. 1940, I was present and saw the common seal of Breeze Corporation of Great Britain Limited affixed to the annexed Deed by —, the — of said Company, and that I saw said — sign, execute and deliver the said Deed for the purposes therein mentioned and that I and — subscribed our names as the witnesses to the due execution thereof.

Sworn to the — day of April, A. D. 1940, before me —, Notary Public.

The corporate seal of Breeze Corporations, Incorporated was affixed by Joseph John Mascuch, the president of said Company and said Joseph John Mascuch affixed his signature hereto on the 26th day of April, in the year of Our Lord, nineteen hundred and forty, in the presence of:

—, Secretary; —, Director.

UNITED STATES OF AMERICA,

State of New York,

County of New York, ss.:

I, John Thomas Mascuch, of the City of Morristown, State of New Jersey, United States of America, Secretary

of Breeze Corporations, Incorporated, make oath and say that on the 26th day of April, A. D. 1940, I was present and saw the corporate seal of Breeze Corporations, Incorporated affixed to the annexed Deed by Joseph John Mascuch, the President of said Company, and that I saw said Joseph John Mascuch, sign, execute and deliver the said Deed for the purposes therein mentioned and that I and \_\_\_\_\_ subscribed our names as the witnesses to the due execution thereof.

Sworn to this 26th day of April, A. D. 1940, before me \_\_\_\_\_, Notary Public.

[fol. 33] STATE OF NEW YORK,  
City of New York,  
County of New York, ss.:

On this 26th day of April, 1940, before me came Joseph John Mascuch and John Thomas Mascuch, to me known, who, being by me duly sworn, did depose and say that they reside in the State of New Jersey, U. S. A. and that they are the President and Secretary, respectively, of Breeze Corporations, Incorporated, the corporation described in, and which executed the foregoing instrument; that they know the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that they signed their names thereto by like order.

The corporate seal of Federal Laboratories Incorporated was affixed by Robert Reynolds, the President of said Company and said Robert Reynolds affixed his signature hereto on the 26th day of April, in the year of our Lord, nineteen hundred and forty, in the presence of: \_\_\_\_\_, Secretary; \_\_\_\_\_, Director.

UNITED STATES OF AMERICA,  
State of New York,  
County of New York, ss.:

I, Harry Rau, of the City of Pittsburgh, State of Pennsylvania, United States of America, Secretary of Federal Laboratories Incorporated, make oath and say that on the 26th day of April, A. D. 1940, I was present and saw the corporate seal of Federal Laboratories Incorporated af-

fixed to the annexed Deed by Robert Reynolds, the President of said Company, and that I saw said Robert Reynolds sign, execute and deliver the said Deed for the purposes therein mentioned and that I and ——— subscribed our names as the witnesses to the due execution thereof.

Sworn to this 26th day of April, A. D. 1940, before me ———, Notary Public.

STATE OF NEW YORK,

City of New York,

County of New York, ss: \_\_\_\_\_

On this 26th day of April, 1940, before me came Robert Reynolds and Harry Rau, to me known, who being by me duly sworn, did depose and say that they reside in the City of Pittsburgh, State of Pennsylvania, U. S. A. and that they are the President and Secretary, respectively of Federal Laboratories Incorporated, the corporation described in; and which executed the foregoing instrument; that they know the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that they signed their names thereto by like order.

[fol. 34] EXHIBIT "C" TO COMPLAINT

UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY

No. 1395

ROSCOE A. COFFMAN, Plaintiff,

vs.

FEDERAL LABORATORIES, INC., a corporation of the State of Delaware and Breeze Corporations, Inc., a Corporation of the State of New Jersey, Defendants

ANSWER OF DEFENDANT BREEZE CORPORATIONS, INC.

The defendant, Breeze Corporations, Inc., answering the plaintiff's complaint herein, says that:

1. It denies the allegations contained in paragraph 1 of the complaint herein.



2. It has no knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 2, 3, or 4 of the complaint herein.

3. It denies the allegations contained in paragraphs 5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 17, 18 and 19 of the complaint herein.

4. It admits the allegations contained in paragraph 9, except that for the greater certainty it begs leave to refer to the original of said agreement when the same may be produced, as to the terms, tenor and legal effect thereof.

5. It admits the allegations contained in paragraph 10 of the complaint herein.

#### First Separate Defense

The complaint fails to state a claim against the defendant, Breeze Corporations, Inc., upon which relief can be granted.

#### Second Separate Defense

The alleged right of action set forth in the complaint did not accrue within six years next before the commencement of this action.

#### [fol. 35] Third Separate Defense

The defendant alleges that the English companies, to wit, the Plessey Company Limited and Breeze Corporation of Great Britain Limited, offered to pay to the American companies, to wit, the Federal Laboratories, Inc., and the Breeze Corporations, Inc., the sum of \$402,000; \$16,000 of which was payment for a forty per cent (40%) stock interest which the defendant, Breeze Corporations, Inc., held in the Breeze Corporation of Great Britain Limited, and the balance \$384,000 was a lump sum payment for royalties due from the English companies to the American companies, to wit, Breeze Corporations, Inc., and Federal Laboratories, Inc. The defendant, Breeze Corporations, Inc., agreed with the defendant, Federal Laboratories, Inc., that the said sum of \$384,000 should be divided between them in the following proportions: \$284,000 to Breeze Corporations, Inc., and \$100,000 to Federal Laboratories, Inc.

This defendant alleges that the plaintiff agreed with the defendant, Federal Laboratories, Inc., to accept fifty

per cent (50%) of the sum of \$100,000 which was paid to the defendant, Federal Laboratories, Inc., and accepted by it in lieu of royalties due from the English companies and that the said plaintiff did in fact accept the sum of \$50,000 after he had full knowledge of all the facts herein alleged, and with full knowledge of all of the said facts executed and delivered to the English companies a general release of any and all claims for royalties.

#### Fourth Separate Defense

The court is without jurisdiction over the subject matter.  
Milton, McNulty & Angelli, Attorneys for Defendant, Breeze Corporations, Inc.

[fol. 36]

#### EXHIBIT "D" TO COMPLAINT

War Department, Washington

Royalty Adjustment Order No. W-9

(Royalty Adjustment Act 1942, Public Law 768,  
77th Cong.; 35 U. S. C., 89-96)

IN THE MATTER OF

ROSCOE A. COFFMAN, Licensor,

and

FEDERAL LABORATORIES, INC., and BREEZE CORPORATIONS, INC., Licensee.

Whereas, pursuant to authority contained in the Royalty Adjustment Act 1942, Public Law 768, 77th Cong.; 35 U. S. C., 89-96, written notice was given on or about March 1943, to Roscoe A. Coffman (hereinafter called "Licensor") and to Federal Laboratories, Inc., and to Breeze Corporations, Inc. (individually and collectively herein after called "Licensee"), that the rates or amounts of royalties, provision for the payment of which by Licensee to Licensor is made in an agreement between Roscoe A. Coffman as licensor and Federal Laboratories, Inc., as licensee, dated December 8, 1932, and which payments are made by Breeze Corporations, Inc., in its capacity as ex-

clusive sales agent and distributor for Federal Laboratories, Inc., under an agreement between Breeze Corporations, Inc., and Federal Laboratories, Inc., dated April 28, 1937, extended by agreement of April 28, 1939, or by virtue of the corporate relationship existing between Breeze Corporations, Inc., and Federal Laboratories, Inc., or by virtue of any other relationship, arrangement, agreement or understanding, according to which said royalties are paid by them or either of them to Licensor in respect of certain alleged inventions in or relating to cartridge starters, and which said royalties are directly or indirectly charged or chargeable to the War Department for or on account of the manufacture, use, sale or other disposition for the United States of said alleged inventions, were believed to be unreasonable or excessive taking into account the conditions of wartime production, and that until the making of an Order herein no royalties should be paid by Licensee to Licensor on account of such manufacture, use, sale or other disposition for the United States; and

Whereas, Licensor, upon his request, has presented in person and through his accountant such facts and circumstances as he desired having a bearing upon the rates or amounts of royalties to be determined, fixed and specified by Order pursuant to said Act:

[fol. 37] Now, therefore, pursuant to authority of and for the purposes set forth in said Act, and upon taking into account the facts and circumstances presented as aforesaid, the conditions of wartime production, and such other facts and circumstances as ought properly to be considered in determining a fair and just rate or amount of royalties in the premises, it is hereby ordered as follows, viz:

(1) Fair and just rates and amounts of royalties for the manufacture, use, sale or other disposition of said alleged inventions are hereby determined, fixed and specified to be as follows:

(a) Upon each starter sold to or for either the War Department or the Navy Department, the sum of Eight (\$8) Dollars each, and

(b) upon parts and cartridges sold to or for either the War Department or the Navy Department, no royalties;

but not to exceed the sum of Fifty Thousand (\$50,000) Dollars to be paid to Licensor in each calendar year commencing January 1, 1943 in respect of starters sold to or for the War Department and the Navy Department, added together.

(2) Until further Order, Licensee is hereby *authorized* to pay to Licensor, on account of any manufacture, use, sale or other disposition of said alleged inventions for the War Department heretofore occurred, or hereafter occurring while Sections 1 and 2 of said Act remain in force, royalties at the rate and not to exceed the amount determined, fixed and specified in paragraph (1) hereof, and no more, under

(a) the above-mentioned license agreement dated December 8, 1932, and

(b) any license or arrangement between Licensor and Licensee entered into on or after the effective date of said notice and during the time that Sections 1 and 2 of said Act remain in force which in any respect continues, supplements, modifies or supersedes the license referred to in subparagraph (a) hereof or the present arrangement under which said royalties are paid.

(3) Licensee is hereby directed to pay over to the Treasurer of the United States, through Commanding General, Army Air Forces Materiel Command, attention, Royalty Adjustment Board, Wright Field, Dayton, Ohio, the balance, in excess of the payments authorized by paragraph (2) hereof, of all royalties specified in the licenses or arrangements referred to in paragraph (2) hereof which were due to Licensor and were unpaid on the effective date of said notice or since said date have or may hereafter become due to Licensor, on account of any manufacture, use, sale or other disposition of said inventions for the War Department or the Navy Department heretofore occurred or hereafter occurring while Sections 1 and 2 of said Act remain in force; and demand is hereby made for payment forthwith of so much of said balance as is now due to Licensor.

(4) Reservation is hereby expressly made of the right to amend, modify, revoke or extend this Order as changed

conditions may warrant, and of the right of the head of any department or agency of the Government, including but not limited to the War Department, to take such other, [fol. 38] further and different action as may be authorized by any statute of the United States with respect to the licenses mentioned in paragraph (2) hereof or any other license which includes provision for the payment of royalties directly or indirectly chargeable to the Government for or on account of the manufacture, use, sale or other disposition for the United States of said alleged inventions.

(5) This Order is made concurrently with the making of a similar order by or in behalf of the Secretary of the Navy.

It is recommended that the Secretary of War make the foregoing Order.

Earl S. Patterson, Colonel, J. A. G. D., Assistant  
Air Judge Advocate.

The foregoing Order is hereby made.

W. F. Volandt, Colonel, Air Corps, Chief, Procurement Branch, Materiel Division, Office of the Assistant Chief of Air Staff, Materiel, Maintenance and Distribution.

The foregoing Order is hereby approved in behalf of the Secretary of War.

By direction of the Under Secretary of War:

Fred C. Foy, Colonel, General Staff Corps, Acting  
Director, Purchases Division, Headquarters, Army  
Service Forces.

Dated: Washington, D. C., December 18, 1943.

[Vol. 39]

## EXHIBIT "E" TO COMPLAINT

## ROYALTY ADJUSTMENT ORDER NO. N-7

(Royalty Adjustment Act 1942, Public Law 768, 77th Cong.; 35 U. S. C., 89-96)

In the Matter of ROSCOE A. COFFMAN, Licensor,

and

FEDERAL LABORATORIES, INC., AND BREEZE CORPORATIONS, INC., Licensee.

Whereas, pursuant to authority contained in the Royalty Adjustment Act 1942, Public Law 768, 77th Cong., 35 U. S. C., 89-96, written notice was given on or about February 24, 1943, to Roscoe A. Coffman (hereinafter called "Licensor") and to Federal Laboratories, Inc., and to Breeze Corporations, Inc., (individually and collectively hereafter called "Licensee"), that the rates or amounts of royalties, provision for the payment of which by Licensee to Licensor is made in an agreement between Roscoe A. Coffman as Licensor and Federal Laboratories, Inc., as Licensee, dated December 8, 1932, and which payments are made by Breeze Corporations, Inc., in its capacity as exclusive sales agent and distributor for Federal Laboratories, Inc., under an agreement between Breeze Corporations, Inc., and Federal Laboratories, Inc., dated April 28, 1937, extended by agreement of April 28, 1939, or by virtue of the corporate relationship existing between Breeze Corporations, Inc., and Federal Laboratories, Inc., or by virtue of any other relationship, arrangement, agreement or understanding, according to which said royalties are paid by them or either of them to Licensor in respect of certain alleged inventions in or relating to cartridge starters, and which said royalties are directly or indirectly charged or chargeable to the Navy Department for or on account of the manufacture, use, sale, or other disposition for the United States of said alleged inventions, were believed to be unreasonable or excessive taking into account the conditions of wartime production, and that until the making of an Order herein no royalties should be paid by Licensee to Licensor on account of such manufacture, use, sale or other disposition for the United States; and



Whereas, Licensor, upon his request, has presented in person and through his accountant such facts and circumstances as he desired having a bearing upon the rates or amounts of royalties to be determined, fixed and specified by Order pursuant to said Act:

Now therefore, pursuant to authority of and for the purpose set forth in said Act, and upon taking into account [fol. 40] the facts and circumstances presented as aforesaid, the conditions of wartime production, and such other facts and circumstances as ought properly to be considered in determining a fair and just rate or amount of royalties in the premises, it is hereby ordered as follows, viz:

(1) Fair and just rates and amounts of royalties for the manufacture, use, sale or other disposition of said alleged inventions are hereby determined, fixed and specified to be as follows:

(a) upon each starter sold to or for either the War Department or the Navy Department, the sum of Eight (\$8.00) Dollars each, and

(b) upon parts and cartridges sold to or for either the War Department or the Navy Department, no royalties;

but not to exceed the sum of Fifty Thousand (\$50,000) Dollars to be paid to Licensor in each calendar year commencing January 1, 1943 in respect of starters sold to or for the Navy Department and the War Department, added together.

(2) Until further Order, Licensee is hereby authorized to pay to Licensor, on account of any manufacture, use, sale or other disposition of said alleged inventions for the Navy Department heretofore occurred, or hereafter occurring while Sections 1 and 2 of said Act remain in force, royalties at the rate and not to exceed the amount determined, fixed and specified in paragraph (1) hereof, and no more, under

(a) the above-mentioned license agreement dated December 8, 1932, and

(b) any license or arrangement between Licensor and Licensee entered into on or after the effective date of said notice and during the time that Sections 1 and

2 of said Act remain in force which in any respect continues, supplements, modifies or supersedes the license referred to in subparagraph (a) hereof or the present arrangement under which said royalties are paid.

(3) Licensee is hereby directed to pay over to the Treasurer of the United States, through Commanding General, Army Air Forces Materiel Command, attention, Royalty Adjustment Board, Wright Field, Dayton, Ohio, the balance, in excess of the payments authorized by paragraph (2) hereof, of all royalties specified in the licenses or arrangements referred to in paragraph (2) hereof which were due to Licensor and were unpaid on the effective date of said notice, or since said date have or may hereafter become due to Licensor, on account of any manufacture, use, sale or other disposition of said inventions for the War Department or the Navy Department heretofore occurred or hereafter occurring while Sections 1 and 2 of said Act remain in force; and demand is hereby made for payment forthwith of so much of said balance as is now due to Licensor.

(4) Reservation is hereby expressly made of the right to amend, modify, revoke or extend this Order as changed conditions may warrant; and of the right of the head of any department or agency of the Government, including but not limited to the Navy Department, to take such other, further and different action as may be authorized by any [fol. 41] statute of the United States with respect to the licenses mentioned in paragraph (2) hereof or any other license which includes provision for the payment of royalties directly or indirectly chargeable to the Government for or on account of the manufacture, use, sale or other disposition for the United States of said alleged inventions.

(5) This Order is made concurrently with the making of a similar order by or in behalf of the Secretary of War.

— Harold G. Bowen, Rear Admiral, U. S. N.; Richard Spencer, Commander, U. S. N. R.

Approved: Forrestal, Acting Secretary of the Navy

[fol. 42] IN DISTRICT COURT OF THE UNITED STATES FOR THE  
DISTRICT OF NEW JERSEY

[Title omitted]

ORDER FOR TEMPORARY RESTRAINT—January 7, 1944

Upon reading and filing the verified complaint and the exhibits annexed thereto in the above entitled cause, and the Court finding from the evidence submitted to the Court in the form of the affidavits and exhibits annexed to the complaint that irreparable loss or damage will result to the plaintiff-petitioner if the royalties due him under the contracts Exhibit 'A' annexed to the complaint, for the year 1943 aggregating approximately \$260,000.00 are paid approximately \$50,000.00 to the plaintiff and the remainder, to wit, approximately \$210,000.00 are paid pursuant to the terms of Royalty Adjustment Orders Nos. W-9 and N-7 to the Treasurer of the United States, no method or means being specified in the appropriate act of Congress for the return of such royalties forthwith from the Secretary of the Treasury to the plaintiff or to the defendants once they are paid to the Treasurer of the United States without a lengthy and costly suit by the plaintiff in the event that the act under which said Royalty Adjustment Orders Nos. W-9 and N-7 issued, to wit: Public Law 768 of the 77th Congress should be declared unconstitutional in accordance with the prayer of plaintiff's complaint, and good cause appearing, it is, on this 7th day of January, 1944.

[fols. 43-45] Ordered that defendants Breeze Corporation, Inc., a New Jersey corporation, and Federal Laboratories, Inc., a Delaware corporation, and their respective officers, agents and attorneys, be and they hereby are enjoined and restrained until a hearing has been held by a special court of three judges, upon notice to the Attorney General of the United States and the said defendants, and determination shall be made by such court, from paying to the Treasurer of the United States all royalties in excess of \$50,000.00 due and payable to the plaintiff pursuant to an agreement made between the plaintiff and the defendant Federal Laboratories, Inc., dated December 8, 1932, in compliance with Royalty Adjustment Orders Nos. W-9 and N-7 which have been served upon the plaintiff and the defendants herein.

Further Ordered that a true copy of this order and of the complaint with affidavits and exhibits annexed thereto, shall be served forthwith upon the defendants and also upon the United States Attorney for the District of New Jersey, and a copy forthwith shall be mailed to the Attorney-General of the United States at his office in Washington, D. C.

William F. Smith, District Judge.

[fol. 46] IN DISTRICT COURT OF THE UNITED STATES FOR THE  
DISTRICT OF NEW JERSEY

Civil Action No. 6

ROSCOE A. COFFMAN, Plaintiff,

v.

FEDERAL LABORATORIES, INC., a Corporation of the State of Delaware, and Breeze Corporations, Inc. a Corporation of the State of New Jersey, Defendants

RESPONSE TO CERTIFICATION OF JANUARY 7, 1944 AND MOTION  
FOR LEAVE TO INTERVENE

UNITED STATES OF AMERICA, Applicant for Intervention

Now comes the United States of America, by Assistant Attorney General Francis M. Shea, and shows that:

(1) On January 7, 1944 the clerk of this court notified the Attorney General, pursuant to the Act of August 24, 1937, 28 U. S. C., Sec. 401, that the plaintiff in the above-entitled case has challenged the constitutionality of the Act of October 31, 1942 (Public Law 768, 77th Congress, approved October 31, 1942, 35 U. S. C., Secs. 89-96). There has been duly served upon the Attorney General a copy of the Bill of Complaint filed January 7, 1944; (a) seeking injunctions forbidding compliance by defendants with Royalty Adjustment Orders W-9 and N-7 issued under said Act of October 31, 1942, and (b) praying that the said Act and said Orders W-9 and N-7 thereunder be adjudged null and void. There has also been served upon the Attorney General a copy of the order of Hon. William F. Smith, District Judge, granting a temporary restraining order pending hearing before a special three-judge court, upon notice to the Attorney General and the defendants, and determination by such court.

(2) Since there is thus drawn in question in a court of the [fol. 47] United States an Act of Congress affecting the public interest, in a suit to which neither the United States nor any agency, officer, or employee thereof is a party, the United States hereby moves pursuant to the Act of August 24, 1937 (28 U. S. C., Sec. 401) and Rule 24 (a) of the Federal Rules of Civil Procedure for leave to intervene and become a party for the purposes of said Act.

(3) The United States further moves that it have until February 7, 1944, to file a Pleading in Intervention, and that the court fix a time within which the parties hereto, if so advised, may reply to such pleading, in default of which, or to the extent not denied in such responsive pleading as the parties may file and serve, the affirmations thereof shall be deemed admitted.

(4) The United States prays that upon the granting of this motion, the hearing now set before the special court at the U. S. Courthouse, Newark, N. J., on Saturday, January 15, 1944, at 10:30 a. m., be continued until March 1, 1944, or such later date as this court may designate in order that the United States may have the necessary time for an adequate study of the constitutional issues involved and the filing of a brief herein.

Francis M. Shea, Assistant Attorney General.

January, 1944.

[fol. 48] IN UNITED STATES DISTRICT COURT, DISTRICT OF  
NEW JERSEY

[Title omitted]

ORDER PERMITTING UNITED STATES OF AMERICA TO  
INTERVENE, ETC.

This matter coming on to be heard on the 15th day of January, 1944 before Circuit Court Judge Gerald McLaughlin, District Court Judge Guy L. Fike and District Court Judge William F. Smith, on a Response to Certification that the plaintiff in the above-entitled proceeding has challenged the constitutionality of the Act of October 31, 1942 (Public Law 768, 77th Congress, approved October 31, 1942, 35 U. S. C. A., Sections 89-96), which Response to



Certification was filed by Howard M. Lawn, Assistant United States Attorney, appearing on behalf of the United States of America and in the presence of Edward J. O'Mara, Esq. of Wall, Haight, Carey and Hartpence, attorneys for the defendant, Breeze Corporations, Inc., and Thomas McNulty, Esq. of Milton, McNulty and Augelli, co-attorneys for the defendant, Breeze Corporations, Inc., and Herbert J. Dwyer, Esq., Secretary of defendant Breeze Corporations, Inc., and James D. Carpenter, Jr. of Carpenter, Gilmour and Dwyer, appearing for the plaintiff; and the said Assistant United States Attorney, having moved to intervene and become a party in said cause and for leave to file a pleading in intervention, that the Court fix a time within which the parties hereto may reply to such pleading, and the Court having heard argument by counsel on the motion of the United States of America for leave to intervene and be made a party in the proceedings, and the United States having moved that the hearing be continued [fol. 49] until March 1st, 1944, or a date thereafter, to be fixed by the Court, and the Court having determined that no continuance of the hearing on the injunction could be granted, and the Court having determined that the interlocutory injunction against the defendants, Breeze Corporations, Inc. and Federal Laboratories, Inc., should issue and continue until the date of final hearing, and no one having interposed objection thereto, and good and sufficient reason therefor appearing.

It is, on this 26th day of January, 1944, Ordered, Adjudged and Decreed as follows:

1. That the United States of America is deemed to be a party in the above-entitled proceeding and shall, on or before February 7th, 1944, file herein and serve upon the attorneys for the plaintiff and the attorneys for the defendants herein, a pleading in intervention in said cause and serve its briefs upon said parties in said cause.

2. On or before February 15th, 1944, the plaintiff and defendants shall file their replies to the pleading in intervention of the United States of America.

3. Plaintiff shall file his brief forthwith and the United States of America shall file its answering brief on or before February 7th, 1944, whereupon plaintiff and defendants may file reply brief thereto on or before February 15th, 1944 and serve the same on all parties in this proceeding.

4. Plaintiff and defendants and the United States of America shall submit stipulation of the facts in the cause or, in the alternative, shall submit stipulation of as many facts as can be mutually agreed upon with a statement of the unresolved facts, forthwith.

5. The defendants, Breeze Corporations, Inc. and Federal Laboratories, Inc., are hereby enjoined and restrained from paying any money to the Treasurer of the United States, pursuant to Royalty Adjustment Orders Nos. W-9 and N-7, until March 4th, 1944, and until the further order of this Court in the premises.

6. Final hearing on all matters involved in the above-entitled cause shall be heard before this Court on the 4th [fol. 50] day of March, 1944 at 10:30 o'clock in the forenoon at the United States Court House and Post Office Building, Federal Square, Newark, New Jersey.

Gerald McLaughlin, Judge, United States Circuit Court of Appeals for the Third Circuit; Guy L. Fake, Judge, United States District Court; William F. Smith, Judge, United States District Court.

[fol. 50-a] IN DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF NEW JERSEY

[Title omitted]

ANSWER OF DEFENDANT BREEZE CORPORATIONS, INC. TO  
PLAINTIFF'S COMPLAINT

1. Defendant Breeze Corporations, Inc. has no knowledge or information sufficient to form a belief as to whether plaintiff is a resident of Las Vegas, Nevada, and a citizen of the State of Nevada, as alleged in paragraph 1 of plaintiff's complaint.

It denies that it is in full and complete control of Federal Laboratories, Inc., a corporation of the State of Delaware, and it denies that the amount involved in this action is in the sum of \$3,000.00 exclusive of interest and costs.

2. It has no knowledge or information sufficient to form a belief as to the allegations contained in paragraph 2 ex-

cept so much thereof as describes the operation of the starters:

3: It has no knowledge as to the allegations of paragraph 3 that on December 8, 1932 plaintiff and defendant Federal Laboratories, Inc. entered into a License Agreement marked Exhibit "A", but is informed and believes it to be true. It denies the other allegations, except that it is the owner of all of the common capital stock of the Federal Laboratories, Inc.

[fol. 50b] 4. It denies the allegations of paragraph 4, but alleges that the defendant Breeze Corporations, Inc. began the manufacture and sale of starters for Federal Laboratories, Inc. under and pursuant to a written agreement between this defendant Breeze Corporations, Inc. and Federal Laboratories, Inc. dated April 28, 1937 and thereafter extended by agreement of the same parties dated April 28, 1939.

5. It has no knowledge or information sufficient to form a belief concerning the allegations of paragraph 5 except that it denies that it purchased the outstanding common capital stock of Federal Laboratories, Inc. for the purpose of securing control of the manufacture and sale of plaintiff's starters and shells, and it denies that in September, 1937, this defendant commenced arbitrarily deducting from remittance of royalties to plaintiff 25% thereof on each accounting period. This defendant denies that it made any remittances of royalties to plaintiff and it denies all of the other allegations of paragraph 5.

6. Defendant denies the allegations contained in paragraph 6 except that it admits that plaintiff commenced an action known as civil action No. 1395 in February, 1941 in the District Court of the United States for the District of New Jersey against Federal Laboratories, Inc. and Breeze Corporations, Inc., but as to the relief sought by the plaintiff in the said action this defendant begs leave to refer to the original records of the said proceedings on file in the said court. The Exhibits "B" and "C" purport to be copies of the pleadings referred to but for greater certainty this defendant begs leave to refer to the originals thereof when the same may be produced. Plaintiff further [fol. 50c] alleges that on April 12, 1943 an order was duly entered in the said cause signed by Honorable William F.

Smith, U. S. D. J. and approved as to form by the attorneys for the plaintiff dismissing the said action as to the defendant Federal Laboratories, Inc. It is untrue that said action is at issue as to the defendant Federal Laboratories, Inc. Issue has been joined as to this defendant and the action is on the calendar awaiting trial in due course. It is wholly untrue that in the said action the court after hearing has ruled that the plaintiff shall be permitted to recover any and all royalties that accrue not to the date of the commencement of said action but to the date of the trial thereof. There has been no trial or hearing on the merits of the controversy and no adjudication by the court of the issues in any respect.

7. It is untrue as stated in paragraph 7 that pursuant to an order of the United States District Court for the District of New Jersey that the plaintiff had accountants examine the books of the two defendant corporations for the purpose of determining the royalties due plaintiff under the terms of the agreement, Exhibit "A". The said court did make an order under date of January 14, 1943 authorizing the plaintiff to make an examination of the books of this defendant, which order was followed by another order dated July 16, 1943 which order was also directed solely to the defendant Breeze Corporations, Inc. This defendant alleges that no order was made in the said cause or in any other cause by the said court against the Federal Laboratories, Inc. but that the said action was dismissed by the said court as to the defendant Federal Laboratories, Inc. as hereinabove set forth. This defendant has no knowledge or information sufficient to form a belief as to what [fol. 50d] the plaintiff's accountants in their examination of this defendant's books may have determined, but this defendant alleges that no determination made by the plaintiff's accountants is in any way binding upon this defendant and it denies that any sum whatsoever is due from it to the plaintiff either by way of royalties or otherwise or that any sum will accrue to the plaintiff from this defendant in the future either by way of royalties or otherwise.

8. This defendant has no knowledge of the allegations contained in paragraph 8 except that it admits that the said order was served upon this defendant.

9. This defendant denies that it is indebted to the plaintiff under the terms of the license agreement, Exhibit "A", for royalties on Coffman starters, parts and shells for the calendar year 1943 in the sum of \$210,000.00 or in any other sum.

10. This defendant has no knowledge or information sufficient to form a belief as to the statements contained in paragraph 10.

11. This defendant admits that it has not paid to the plaintiff the sum of \$50,000.00 mentioned in Royalty Adjustment Orders Nos. W-9 and N-7, nor has it made payment of any other moneys as royalties or otherwise to the Treasurer of the United States pursuant to said Royalty Adjustment Orders, and it denies that any such moneys are due from it to the said plaintiff or to the Treasurer of the United States pursuant to the said orders. This defendant denies the remaining allegations of paragraph 11:

[fol. 50c] 12. This defendant alleges that whether the statute referred to in paragraph 12 is valid or invalid is a matter which is immaterial to this defendant for the reason that it owes the plaintiff no money as royalties or otherwise.

Wall, Haight, Carey & Hartpence, by Edward J. O'Mara, a Member of said Firm, Co-Attorneys for defendant, Breeze Corporations, Inc. Milton McNulty & Angeli, by Thomas McNulty, a Member of said Firm, Co-Attorneys for defendant, Breeze Corporations, Inc.

Clerk's Certificate to foregoing paper omitted in printing.



[fol. 51] IN DISTRICT COURT OF THE UNITED STATES FOR THE  
DISTRICT OF NEW JERSEY

Civil Action No. —

ROSCOE A. COFFMAN, Plaintiff,

v.

FEDERAL LABORATORIES, INC., a Corporation of the State of  
Delaware, and Breeze Corporations, Inc., a Corporation  
of the State of New Jersey, Defendants

UNITED STATES OF AMERICA, Intervenor

MOTION OF INTERVENOR TO DISMISS COMPLAINT

Comes now the United States of America as intervenor  
in this action, pursuant to this Court's order of January  
15, 1944, and moves the Court to dismiss the complaint  
filed by the plaintiff herein on the grounds that:

1. The Court lacks jurisdiction over the subject matter  
of the action in that:

(a) The complaint sets out no case or controversy ap-  
propriate for judicial determination;

(b) The complaint fails to show an actual controversy  
within the meaning of the Federal Declaratory Judgment  
Act (48 Stat. 955, as amended; 28 U. S. C. § 400);

(c) The complaint is premature in requesting the relief  
sought.

2. Plaintiff has no standing to maintain this proceeding.

3. The complaint states no cause of action warranting  
equitable relief, in that:

(a) The complaint fails to show that equitable relief  
is necessary to avoid irreparable injury to plaintiff; and

(b) The plaintiff has a plain, complete and adequate  
remedy at law.

[fol. 52] 4. Plaintiff has no standing to challenge the valid-  
ity of the Royalty Adjustment Act (Act of October 31, 1942,  
56 Stat. 1013, 35 U. S. C. §§ 89-96), or Royalty Adjustment  
Orders No. W-9 and No. N-7 issued by the War and Navy  
Departments, respectively, pursuant to that Act, until the  
licensee, Federal Laboratories, Inc., is subjected to the

jurisdiction of this Court by due service, voluntary appearance, or otherwise.

5. The complaint fails to state a cause of action against the defendants or any of them upon which relief can be granted, in that:

(a) The aforesaid Royalty Adjustment Act is constitutional and valid, and

(b) The aforesaid Royalty Adjustment Orders No. W-9 and No. N-7 are proper.

Francis M. Shea, Assistant Attorney General; Thorn  
Lord, United States Attorney, Attorneys for In-  
tervenor.

February 5, 1944.

[fol. 33] IN DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF NEW JERSEY

(Title omitted.)

#### STIPULATION AS TO NOTICES

The court having requested that the annexed notices Exhibits "A" and "B" from James Forrestal, Acting Secretary of the Navy, and W. F. Volandt, Assistant Chief of Staff (C), Materiel Command, Hdqrs. A. A. F., dated respectively February 24, 1943 and March 3, 1943, addressed to Roscoe A. Coffman, Breeze Corporations, Inc. and Federal Laboratories, Inc. be made a part of the record in the above entitled cause,

It is hereby stipulated that the annexed copies of notices are true copies of the notices sent by the said Acting Secretary of the Navy and the said Assistant Chief of Staff to the plaintiff and defendants in the above entitled cause, and that they shall form a part of the record in the above entitled cause.

Carpenter, Gilmour & Dwyer, Attorneys for Plain-  
tiff; Lester P. Schöene, Special Assistant to the  
Attorney General of the United States of America.

Dated: March 7, 1944.

[fol 54]

## EXHIBIT "A" TO STIPULATION

The Secretary of the Navy, Washington

Feb. 24, 1943.

DEAR SIR:

Pursuant to the Act of October 31, 1942 (Public Law 768, 77th Congress, 2nd Session), a copy of which is enclosed, notice is hereby given that the royalties now being paid directly or indirectly by the United States under certain contracts in which the Federal Laboratories, Inc. is either a prime contractor or a subcontractor and in which the Breeze Corporations, Inc., is either a prime contractor or a subcontractor are believed to be unreasonable or excessive. These payments are made by virtue of an agreement between Roscoe A. Coffman as licensor and Federal Laboratories, Inc., as licensee, dated December 8, 1932.

This notice becomes effective upon receipt hereof or 5 days after the mailing hereof, viz., February 24, 1942, whichever date is the earlier.

Under the Act, the licensee or licensor, if he so requests within 10 days from and after the effective date of this notice, may within 30 days from the date of such request present to the Secretary of the Navy or his authorized representative in writing or in person any facts or circumstances which may, in his opinion, have a bearing upon the rates or amounts of royalties, if any, to be determined, fixed and specified, all as provided in said Act.

As provided in said Act, an order will issue fixing and specifying the rates or amounts of royalties, if any, which are determined to be fair and just taking into account the conditions of war-time production.

This Act provides that the licensee shall not after the effective date of this notice pay to the licensor, nor charge directly or indirectly to the United States, royalties, if any, in excess of those which may be specified in the order to be hereafter made. Until the making of such order no royalties should be paid on account of the manufacture, use, sale, or other disposition for the United States.

Very truly yours, (Sgd.) James Forrestal, Acting Secretary of the Navy

Roscoe Coffman, R. F. D. #1, Box 136, Fallbrook, California.

Breeze Corporation, 41 So. 6th Street Newark, New Jersey.

Federal Laboratories, Inc., 185 41st. Street, Pittsburgh, Pa.

Enclosure:

[fol. 55]

EXHIBIT "B" TO STIPULATION

March 3, 1943.

GENTLEMEN:

Notice is hereby given, pursuant to the Act of October 31, 1942, Public Law 768, 77th Congress, that all money or other considerations being paid or given by way of royalty or otherwise, either directly or indirectly, by the War Department, under contracts and subcontracts and purchases involving the alleged use of certain purported inventions, patents and applications for patents, and all additions and improvements thereof, if any, under or by virtue of that certain agreement between Roscoe A. Coffman as Licensor and Federal Laboratories, Inc., as Licensee, dated December 8, 1942, and all additions to or amendments thereof, (including without prejudice to the generality of the foregoing description Patent No. 1,776,228 and Patent Applications Nos. 585,594, 581,032, 586,057, 595,403, 595,924, 388,879 and 536,389), are believed to be unreasonable or excessive.

You are hereby further notified that from and after the effective date of this notice, the licensee, Federal Laboratories, Inc., and assignees or successors in interest, Breeze Corporations, Inc. shall not pay to the licensor, Roscoe A. Coffman or to his assignees or successors in interest, nor charge directly or indirectly to the United States of America, any moneys or other considerations as royalties or otherwise until an order is made as provided in said Act, fixing and specifying the rates or amounts of royalty, if any, to be paid.

This notice becomes effective upon receipt hereof or five days after the mailing hereof, viz., March 4, 1943, whichever date is the earlier.

Under the Act, the licensee or licensor, if he so requests within ten days from and after the effective date of this notice, may within thirty days from the date of such request present to the Assistant Chief of Staff (C), Materiel Com-

mand, Army Air Forces, Washington, D. C., or Any other officer or officers that may be hereafter designated, in writing or in person any facts or circumstances which may, in his opinion, have a bearing upon the rates or amounts of royalties, if any, to be determined; fixed and specified, all as provided in said Act.

As provided in said Act, an order will issue fixing and specifying the rates or amounts of royalties, if any, which are determined to be fair and just taking into account the conditions of war-time production.

[fol. 56] All communications with regard to the subject matter of this Notice will be addressed to Colonel W. F. Volandt, Assistant Chief of Staff (C), Materiel Command, Headquarters Army Air Forces, Washington, D. C.

Sincerely yours, (Sgd.) W. F. Volandt, Asst. Chief of Staff (C), Materiel Command, Hdqrs., A.A.F.

To: Breeze Corporations, Inc., 41 South 6th Street, Newark, New Jersey. Federal Laboratories, Inc., 41 South 6th Street, Newark, New Jersey. Roscoe A. Coffman, R. F. D. #1, Box 136, Fallbrook, California.

[fol. 57] IN UNITED STATES DISTRICT COURT, DISTRICT OF  
NEW JERSEY

Civil No. 3289

ROSCOE A. COFFMAN, Plaintiff,

vs.

FEDERAL LABORATORIES, INC., a Corporation of the State of Delaware, and

BREEZE CORPORATIONS, INC., a Corporation of the State of New Jersey, Defendants,

UNITED STATES OF AMERICA, Intervenor

Before McLaughlin, Circuit Judge, and Fake and Smith, District Judges, designated pursuant to the Act of August 24, 1937, c. 754, § 3, 50 Stat. 752, 28 U. S. C. A. 380a.

# OPINION

SMITH, District Judge:

This is a civil action brought by the plaintiff Roscoe A. Coffman against the defendants Federal Laboratories, Inc.,



and Breeze Corporations, Inc., to enjoin the said defendants alleged threatened compliance with two Royalty Adjustment Orders, the one (No. W-9) issued by the War Department, and the other (No. N-7) issued by the Navy Department, pursuant to and in accordance with the provisions of the Royalty Adjustment Act, 56 Stat. 1013-1015, 35 U. S. C. A. 89-96. The defendant Federal Laboratories, Inc., although joined as a party, was not served with process and did not enter an appearance.

[fol. 58] This suit, as it now stands, has for its only object injunctive relief against the defendant Breeze Corporations, and presents an anomalous situation. The plaintiff, without invoking the judgment of the Court on any other issues, challenges the constitutionality of the Royalty Adjustment Act and the validity of the Royalty Adjustment Orders issued thereunder, and prays injunctive relief. The defendant, although entering an appearance, neither denies the allegations that the Act is unconstitutional and the Orders are invalid nor resists the application for an injunction, but assumes a neutral position. The reason for this neutrality becomes apparent upon a reading of the facts hereinafter summarized. The only opposition is that offered by the United States, the intervenor.

The United States, having been permitted to intervene, moved to dismiss the complaint on the grounds: first, that the Court lacked jurisdiction because of the failure of the complaint to state a justiciable controversy, and second, that the Court lacked jurisdiction to grant injunctive relief because of the want of equity. The Court, having reserved decision on the motion, proceeded to hear argument on the merits, but our decision on the motion makes consideration of the merits unnecessary.

A brief summary of the events which led to the present action will be conducive to a clear understanding, not only of the questions raised by the motion, but also of the reasons advanced by the Court in support of its decision. [fol. 59] The plaintiff, the sole owner of a series of patents covering inventions therein defined, under an agree-

<sup>1</sup>Act of August 24, 1937, c. 754, § 1, 50 Stat. 751, 28 U. S. C. A. 401.

ment dated December 18, 1932, granted to the Federal Laboratories an exclusive license to manufacture, use, and sell the inventions. The said agreement fixed the "license fee or royalty" in an amount "equal to six percent (6%) of the . . . net selling price on all devices and parts thereof sold." The Federal Laboratories, under agreements dated April 28, 1937 and April 28, 1939, employed and engaged the defendant Breeze Corporations, as the "exclusive sales agent and distributor," to manufacture and sell the inventions.

On February 18, 1941 the plaintiff instituted an action in this court (Civil Action No. 1395) against Federal Laboratories in addition to other relief, an accounting for royalties allegedly due and owing under the said license agreement and wrongfully withheld. The other issues raised in that action are not pertinent here and need not be discussed. The defendant Breeze Corporations, answering the complaint, denied any liability for royalties allegedly due and owing under the license agreement; Federal Laboratories, not having been served with process, did not answer. That action, hereinafter referred to as the law action, is still pending and awaiting trial.

While the law action was pending, the representatives of the War Department, pursuant to the provisions of the Royalty Adjustment Act, and particularly Section 1 thereof, 35 U. S. C. A. 89, having determined that the fees and royalties payable to the plaintiff under the said license agreement on patented devices manufactured for and [fol. 60] chargeable to the said Department, either directly or indirectly, were unreasonable and excessive, adjusted the basis of compensation and fixed both the "rates and the amount" of royalties in amounts determined by them to be "fair and just." The terms and conditions of the adjustment were embodied in Royalty Adjustment Order No. W-9, the pertinent provisions of which are recited in *Oratories and Breeze Corporations* <sup>2</sup> in which he demanded,

<sup>2</sup> Between July of 1937 and October of 1942, while the contracts were in force and effect, the defendant Breeze Corporations acquired all of the common stock and most of the preferred stock of the Federal Laboratories, and this stock it still owns.

in the footnote.<sup>3</sup> The representatives of the Navy Department, following a like procedure, issued Royalty Adjustment Order No. N-7, in which identical terms and conditions were incorporated.

(1) Fair and just rates and amounts of royalties for the manufacture, use, sale or other disposition of said alleged inventions are hereby determined, fixed and specified to be as follows:

(a) Upon each starter sold to or for either the War Department or the Navy Department, the sum of Eight (\$8) Dollars each, and

(b) upon parts and cartridges sold to or for either the War Department or the Navy Department, no royalties; but not to exceed the sum of Fifty Thousand (\$50,000) Dollars to be paid to Licensor in each calendar year commencing January 1, 1943, in respect of starters sold to or for the War Department and the Navy Department, added together.

(2) Until further Order, Licensee is hereby authorized to pay to Licensor, on account of any manufacture, use, sale or other disposition of said alleged inventions for the War Department heretofore occurred, or hereafter occurring while Sections 1 and 2 of said Act remain in force, royalties at the rate and not to exceed the amount determined, fixed and specified in paragraph (1) hereof, and no more, under

(a) the above-mentioned license agreement dated December 8, 1932, and

(b) . . . . .

(3) Licensee is hereby directed to pay over to the Treasurer of the United States, . . . . . the balance, in excess of the payments authorized by paragraph (2) hereof, of all royalties specified in the licenses . . . . . referred to in paragraph (2) hereof which were due to Licensor and were unpaid on the effective date . . . . . or since said date have or may hereafter become due to Licensor, on account of any manufacture, use, sale or other disposition of said inventions for the War Department or the Navy Department heretofore occurred or hereafter occurring while Sections 1 and 2 of said Act remain in force; and demand is hereby made for payment forthwith of so much of said balance as is now due to Licensor."

The Orders, in addition to modifying the basis of compensation, fixed the maximum sum payable to the plaintiff in each calendar year at fifty thousand dollars, and directed that "the balance, in excess of the payments authorized \* \* \*, of all royalties specified in the licenses \* \* \* which were due to Licensor (plaintiff) and were unpaid on [fol. 61] the effective date \* \* \*, or since said date have or may hereafter become due to Licensor, on account of any manufacture, use, sale or other disposition of said inventions for the War Department or the Navy Department \* \* \*," be paid to the Treasurer of the United States.

In December 1943, certified copies of these orders were served on all of the interested parties, to wit, Rosecoe A. Coffman, Federal Laboratories, and Breeze Corporations. The present action followed. The defendant Breeze Corporations filed an answer in which it denied liability to either the plaintiff or the Treasurer of the United States, a position consistent with its stand in the earlier law action. The said defendant, however, asserted no right or defense predicated upon either the Orders or the Act, and did not controvert the plaintiff's allegations that the former were invalid and the latter was unconstitutional.

It is reasonably apparent, upon consideration of the facts and circumstances embraced within the pleadings and herein summarized, that as between the immediate parties to this action there is no "case" or "controversy," within the meaning of Article 3, Section 2, of the Constitution. The complaint does not invoke the judgment of the Court on the respective rights and liabilities of the parties, but invites only an adjudication on the constitutionality of the Statute and the validity of the Orders; such an adjudication is not essential to the determination of any right or interest asserted by the plaintiff and controverted by the defendant in this action. This defendant, as hereinabove stated, asserts no right or defense predicated upon either the Act or the Orders, and offers no resistance to the application for injunctive relief. The "adverse legal interests" in the subject of inquiry requisite to a "case" [fol. 62] or "controversy" are obviously absent. This defect is fatal to the jurisdiction of the Court. *South Spring Gold Co. v. Amador Gold Co.*, 145 U. S. 300; *Fair-*



child v. Hughes, 258 U. S. 126; Massachusetts v. Mellon, 262 U. S. 447, and other cases hereinafter cited.

The pleadings present nothing more than abstract questions, the answers to which, at least in this suit, are not determinative of the respective rights and liabilities of the immediate parties. The exercise of the judicial power does not extend to the determination of such questions. Liverpool, &c. Steamship Co. v. Commissioner of Emigration, 113 U. S. 33; Chicago &c. Railway Co. v. Wellman, 143 U. S. 339; California v. San Pablo, &c. Railroad Co., 149 U. S. 308; Muskrat v. United States, 219 U. S. 346; Keller v. Potomac Electric Power Co., 261 U. S. 428; Liberty Warehouse Co. v. Grannis, 273 U. S. 70. The interest of the plaintiff in the only subject of the purported controversy, the constitutionality of the Statute and the validity of the Orders, will not sustain this suit or support the jurisdiction of the Court in the absence of a real adverse interest therein maintained by the defendant *Ibid*.

It is well settled that the judicial power, the power to adjudicate legal rights and pronounce judgment, vested in the courts by the Constitution, is limited to the determination of actual controversies between adverse litigants. The requirements of a justiciable controversy are clearly defined by the Supreme Court in Aetna Life Ins. Co. v. Haworth, 300 U. S. 216, 240, 241, in which it was stated:

[fol. 63] "The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. South Spring Gold Co. v. Amador Gold Co., 145 U. S. 300, 301; Fairchild v. Hughes, 258 U. S. 126, 129; Massachusetts v. Mellon, 262 U. S. 447, 487, 488. It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts. See Muskrat v. United States, *supra*; Texas v. Interstate Commerce Comm'n., 258 U. S. 158, 162; New Jersey v. Sargent, 269 U. S. 328, 339, 340; Liberty Warehouse Co. v. Grannis, 273 U. S. 70; New York v. Illinois, 274 U. S. 488, 490; Willing v. Chicago Auditorium Assn., 277 U. S. 274, 289, 290; Arizona v. California, 283 U. S. 423, 463, 464; Alabama v. Arizona, 291 U. S. 286, 291; United States v. West Virginia, 295 U. S. 463, 474, 475; Ashwander v. Tennessee Valley



Authority, 297 U. S. 288, 324. Where there is such a concrete case *admitting of an immediate and definitive determination of the legal rights* of the parties in an *adversary proceeding* upon the facts alleged, the judicial function may be appropriately exercised although the adjudication of the rights of the litigants may not require the award of process or the payment of damages. *Nashville, C. & St. L. Ry. Co. v. Wallace*, supra, [fol. 64] p. 263; *Tutun v. United States*, 270 U. S. 568, 576, 577; *Fidelity National Bank v. Swope*, 274 U. S. 123, 132; *Old Colony Trust Co. v. Commissioner*, supra, p. 725." (Emphasis by the Court).

That case and the cases herein cited emphasize the prerequisite of "adverse legal interests" in the subject matter of the controversy, the subject of judicial inquiry.

There is no power in the courts to declare an act of Congress unconstitutional except in an actual controversy in which such a declaration is indispensable to the determination of the respective rights and liabilities of adverse litigants and the pronouncement of judgment. *Liverpool, & Steamship Co. v. Commissioners of Emigration*; *Chicago, & N. W. Ry. Co. v. Wellman*; *California v. San Pablo, & N. P. Ry. Co.*; *Muskat v. United States*; *Liberty Warehouse Co. v. Grannis*; *Massachusetts v. Mellon*, all supra; *United States v. Johnson*, 319 U. S. 302; *Willing v. Chicago Auditorium Assn.*, 277 U. S. 274. The rights of the one litigant and the liabilities of the other must be so dependent upon or affected by the challenged statute as to render an adjudication on its constitutionality necessary to the ultimate decision and final judgment. *Ibid.* The present action fails to meet these requirements.

When the nature of the present suit, the relations of the immediate parties, and the relief sought, are considered it appears that the United States is a necessary party whose presence is indispensable to the final adjudication of the only issues here raised, the constitutionality of the Act and the validity of the Orders. *Texas v. Interstate Commerce Comm'n.*, supra; *Gregory v. Stetson*, 133 U. S. 579; *Minnesota v. Northern Securities Co.*, 184 U. S. 199, 235; *Grierich* [fol. 65] v. *Rutter*, 265 U. S. 388; *Commonwealth Trust Co. v. Smith*, 266 U. S. 152; *Garretson v. National Surety Co.*, 63 F. 2d 847; *Chicago, M., St. P. & P. R. Co. v. Adams County*, 72 F. 2d 816; *State of Washington v. United States*,

87 F. 2d 421; *Angell v. Schram*, 109 F. 2d 380; *Baird v. Peoples Bank & Trust Co.*, 120 F. 2d 1001. Under Section 4 of the Statute, 35 U. S. C. A. 92, the reduction of royalties effected by the Orders inures only "to the benefit of the Government by way of a corresponding reduction in the contract price to be paid directly or indirectly for (the) manufacture, use, sale, or other disposition of (the) invention." There is no consequent advantage thereunder, either direct or indirect, accruing to the defendant. It necessarily follows that under these circumstances an injunction in conformity with the prayers for relief, restraining the defendant's compliance with the Orders, would affect the rights of the United States and leave the only conflicting interest, those of the plaintiff and the United States, in a state of uncertainty. This absence of an indispensable party defeats the equity jurisdiction of this Court. *Ibid.*

Even if the complaint could be regarded as presenting a "case" or "controversy" within the meaning of Article 3, Section 2 of the Constitution, it must be dismissed for want of equity. The bare allegations that the Act is unconstitutional and the Orders promulgated thereunder are invalid will not sustain the authority of the Court to grant injunctive relief. It is well established that sufficient allegations of "further circumstances" which bring the suit within "some recognized head of equity jurisdiction" is a prerequisite to the exercise of this extraordinary power. *Cruickshank v. Bidwell*, 176 U. S. 73; *Boise Artesian Water [fol. 66] Co. v. Boise City*, 213 U. S. 276; *Southern Railway Co. v. King*, 217 U. S. 524; *Heald v. District of Columbia*, 259 U. S. 114; *Terrace v. Thompson*, 263 U. S. 197; *Northport Power & Light Co. v. Hartley*, 283 U. S. 568; *Matthews v. Rodgers*, 284 U. S. 521; *Champlin Refining Co. v. Corporation Commission*, 286 U. S. 210; *Anniston Mfg. Co. v. Davis*, 301 U. S. 337; *Yarnell v. Hillsborough Packing Co.*, 70 F. 2d 435; *Richmond Hosiery Mills v. Camp*, 74 F. 2d 200, and other cases herein cited. The allegations of the complaint are patently deficient in this respect and the reasons for this deficiency are evident.

The present suit has for its ultimate object the protection of the plaintiff's contractual right to the royalties fixed by the license agreement and due and to become due thereunder. This right, a mere chose in action, is cognizable and enforceable in an action at law. If the Act is constitutional and the Orders issued thereunder valid, the plaintiff may

maintain an action against the United States under Section 2 of the Statute, 35 U. S. C. A. 90, "to recover such sum, if any, as, when added to the royalties fixed and specified in (the Orders), shall constitute fair and just compensation . . . for the manufacture, use, sale or other disposition of the licensed invention for the United States." If the converse is true, the plaintiff may, notwithstanding the statutory prohibition,<sup>4</sup> recover the royalties fixed by the license agreement in an action at law against the parties liable for their payment; the provisions of the Act, if unconstitutional, could not be successfully interposed as a defense to such an action.

[fol. 67] Cruickshank v. Bidwell, 176 U. S. 73, 81.

It seems obvious that this action fails to meet the recognized test of equity jurisdiction, to wit, the lack of a plain, adequate, and complete remedy at law. The complaint is devoid of any allegations from which it may be inferred that the available legal remedies are inadequate and is equally devoid of any allegations from which it may be inferred that the plaintiff, if left to his legal remedies, would be exposed to imminent danger of irreparable injury. These prerequisites are indispensable to the exercise of equity jurisdiction. Cruickshank v. Bidwell; Boise, Artesian Water Co. v. Boise City; Heald v. District of Columbia; Massachusetts v. Mellon; Terrace v. Thompson; Northport Power & Light Co. v. Hartley; Matthews v. Rodgers; Champlin Refining Co. v. Corporation Commission; Anniston Mfg. Co. v. Davis, all supra; Cavanaugh v. Looney, 248 U. S. 453; United Gas Co. v. Railroad Commission, 278 U. S. 300; State Commission v. Wichita Gas Co., 290 U. S. 561.

The complaint is dismissed for the reasons herein stated and the temporary injunction heretofore granted is vacated.

<sup>4</sup> Royalty Adjustment Act, § 1, 56 Stat. 1013, 35 U. S. C. A. 89.

[fols. 68-71] IN DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF NEW JERSEY

Civil Action No. 3289

ROSCOE A. COFFMAN, Plaintiff,

VS.

FEDERAL LABORATORIES, INC., a Corporation of the State of  
Delaware, and Breeze Corporations, Inc., a Corporation  
of the State of New Jersey, Defendants

UNITED STATES OF AMERICA, Intervenor

### JUDGMENT

This cause having been argued before a Special Court on  
March 4, 1944, and the United States of America having  
intervened and filed a motion to dismiss the complaint, and  
the argument of the attorneys for the plaintiff and Lester  
P. Schoene, Special Assistant to the Attorney General,  
having been heard and their briefs considered, and the  
Court having filed its opinion, it is, on this 6th day of  
April, 1944,

Ordered that the plaintiff's complaint be and the same is  
hereby dismissed.

By the Court:

Guy L. Fake, District Judge.

[fol. 72] IN DISTRICT COURT OF THE UNITED STATES FOR THE  
DISTRICT OF NEW JERSEY

[Title omitted]

### ORDER ALLOWING APPEAL WITH STAY

Plaintiff Roscoe A. Coffman having filed his petition for  
an appeal to the Supreme Court of the United States pur-  
suant to the provisions of the Act of August 24, 1937, and  
having filed his bond with sufficient surety in the sum of  
\$250.00, approved as to form and sufficiency, and having  
also filed his assignment of errors and statement as to  
jurisdiction and petition alleging that unless restrained  
by this Court defendant Breeze Corporations, Inc. may pay

to the Treasurer of the United States large sums of money pursuant to the Royalty Adjustment Orders which the plaintiff attacks as illegal and null and void, it is, on this 6th day of April, 1944,

Ordered as follows:

(1) Plaintiff's appeal be and the same is hereby allowed to the Supreme Court of the United States from the Judgment of this Court.

(2) Until the further order of this Court, or of the Supreme Court of the United States, the defendants Breeze [fol. 73] Corporations, Inc. and Federal Laboratories, Inc. are hereby enjoined and restrained from paying any moneys due and owing to the plaintiff, Roscoe A. Coffman, to the Treasurer of the United States pursuant to the provisions of Royalty Adjustment Orders Nos. W-9 and N-7.

By the Court:

Guy L. Fake, District Judge.

[fol. 74] SUPREME COURT OF THE UNITED STATES

[Title omitted]

#### ASSIGNMENT OF ERRORS

Now comes the above named appellant, Roscoe A. Coffman, by James D. Carpenter, Jr., his attorney, and says that in the record and proceedings in the above entitled matter there is manifest error in this, to wit:

#### I

The District Court of the United States for the District of New Jersey erred in entering judgment dismissing plaintiff's complaint,

#### II

The District Court erred in holding that there was no case or controversy between the parties hereto within the meaning of Article III, Sec. 2 of the Constitution of the United States.

#### III

The District Court erred in holding that the pleadings present nothing more than abstract questions and that the



judicial power does not extend to the determination of the questions raised by the complaint in this cause.

#### IV

The District Court erred in not holding that there was a [fol. 75] real and substantial controversy presented by plaintiff's complaint, the allegations of which were admitted by the motion to dismiss, admitting of specific relief to the protection of plaintiff's rights to his royalties which were in the hands of the defendant Breeze Corporations, Inc., and preventing them being paid over to the Treasurer of the United States pursuant to the commands of Royalty Adjustment Orders Nos. W-9 and N-7.

#### V

The District Court erred in not holding that the complaint in this cause presented a concrete case admitting of an immediate and definitive determination of the legal rights of the plaintiff to have and receive from the defendant Breeze Corporations, Inc. royalties due him under his contract of December 8, 1932, unaffected by the provisions of Royalty Adjustment Orders Nos. W-9 and N-7 annexed to the complaint, allegedly made pursuant to the Royalty Adjustment Act of 1942.

#### VI

The District Court erred in not holding that there was a justiciable controversy between the plaintiff and defendant Breeze Corporations, Inc., involving the right of the plaintiff to prevent defendant Breeze Corporations, Inc. from paying to the Treasurer of the United States, as required by Royalty Adjustment Orders Nos. W-9 and N-7, all royalties due plaintiff in excess of \$50,000.00 for the year 1943.

#### VII

The District Court erred in not holding as a matter of law that the legal rights of the plaintiff to have and receive from defendant Breeze Corporations, Inc. royalties in the [fols. 76-113] amounts fixed in his contract of December 8, 1932, and at the times stated therein, were prejudiced and impaired by Royalty Adjustment Orders Nos. W-9 and N-7 made in pretended compliance with the Royalty Adjustment Act of 1942, and that consequently plaintiff was entitled

to an injunction restraining defendant Breeze Corporations, Inc. from complying with the provisions of said Royalty Adjustment Orders and each of them, and especially from paying to the United States as commanded by said Orders, all royalties due plaintiff in excess of \$50,000.00 per annum.

Wherefore the plaintiff Roscoe A. Coffman prays that the judgment of the said District Court of the United States for District of New Jersey appealed from herein be reversed.

James D. Carpenter, Jr., Attorney for Appellant.  
Office & P. O. Address: #75 Montgomery Street,  
Jersey City 2, N. J.

[fol. 114] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO  
RELY AND DESIGNATION OF THE PARTS OF THE RECORD HE  
THINKS NECESSARY FOR THE CONSIDERATION THEREOF—  
Filed April 28, 1944.

Plaintiff-appellant Roscoe A. Coffman intends to rely  
on the following points on the appeal in this cause:

I

The District Court erred in dismissing plaintiff's complaint as it had undoubted jurisdiction to restrain defendant Breeze Corporations, Inc. from complying with the terms of Royalty Adjustment Orders Nos. W-9 and N-7, and paying all royalties due and to grow due plaintiff in excess of \$50,000 per annum to the Treasurer of the United States.

II

The Royalty Adjustment Act, Public Law 768, 77th Congress, (56 Stat. 1015) and Royalty Adjustment Orders made in compliance therewith, Nos. W-9 and N-7, violate the Fifth Amendment in that they take plaintiff's property for public use without just compensation.

III

Said Royalty Adjustment Act and the Royalty Adjustment Orders made in compliance therewith are void in

that they take plaintiff's property without due process of [fol. 115] law in violation of the Fifth Amendment.

#### IV

The Royalty Adjustment Act of 1942 is void as in conflict with Article I and Section 8 of the Federal Constitution, having no standards for the guidance of administrative agencies.

#### V

The Royalty Adjustment Act of 1942 aforesaid is not an act providing for the valid exercise of the power of eminent domain, no public necessity for the taking of royalties being shown, or required.

#### VI

The Royalty Adjustment Act of 1942 is void in that it does not provide for just compensation to a licensor for the taking of royalties reserved by license agreements made long before the declaration of war.

(a) The taking of royalties that have accrued prior to the institution of any proceedings; and all royalties accrued prior to the issuance of Royalty Adjustment Orders ten months after the preliminary notice is nothing less than confiscation.

(b) The sole right given an inventor in Section 11 of the Royalty Adjustment Act to sue the United States in the Court of Claims for just compensation, in which "suit the United States may avail itself of any and all defenses, general or special, that might be pleaded by a defendant in an action for infringement," is not a fair substitute for specific royalties payable quarter-annually reserved in a license agreement wherein the validity of the patents is conceded.

[fol. 116] Appellant hereby designates the following parts of the record which he thinks necessary for the consideration of this appeal:

1. Plaintiff's Complaint in the District Court with all exhibits attached.
2. Order dated January 7, 1944.

3. Order dated January 26, 1944 continuing stay.
4. Stipulation filed with District Court and notices to plaintiff from the War Department and Navy Department under Royalty Adjustment Act.
5. Intervention by the United States.
6. Notice of Motion by United States to dismiss Complaint.
7. Opinion of Special Court.
8. Judgment dismissing plaintiff's Complaint.
9. Order allowing appeal with stay.
10. Assignments of Error.
11. Statement of Jurisdiction.
12. Addendum to Statement of Jurisdiction.
13. Statement of Points.

Respectfully submitted, James D. Carpenter, Jr.,  
Of Counsel with Plaintiff-Appellant, 75 Montgomery Street, Jersey City 2, N. J.

[fol. 116a] [File endorsement omitted]

[fol. 117] IN THE SUPREME COURT OF THE UNITED STATES

STIPULATION AS TO PRINTED RECORD—Filed May 22, 1944

The parties to this cause, through their respective attorneys, hereby stipulate that the printed record in the above-entitled case shall contain, in addition to those materials already filed with the Clerk of this Court, the "Answer of Defendant Breeze Corporations, Inc. To Plaintiff's Complaint" filed in the court below, a true copy of which is attached hereto.

James D. Carpenter, Jr., Attorney for Plaintiff-Appellant. Charles Fahy, Solicitor General, Attorney for Intervenor.

May 1944.

[fol. 117a] [File endorsement omitted]

[fol. 118] SUPREME COURT OF THE UNITED STATES.

ORDER POSTPONING FURTHER CONSIDERATION OF THE QUESTION  
OF JURISDICTION—May 22, 1944

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of the jurisdiction of this Court is postponed to the hearing of the case on the merits.

Endorsed on cover: File No. 48,432, D. C. U. S., New Jersey, Term No. 71. Roscoe A. Coffman, Appellant, vs. Breeze Corporations, Inc., and The United States of America. Filed April 28, 1944. Term No. 71 O. T. 1944.



